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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
12

13 IN RE: HIGH-TECH EMPLOYEE
14 ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS
17
18
19

Master Docket No. 11-CV-2509-LHK

**EXHIBIT 3 TO DECLARATION OF
CHRISTINA BROWN IN SUPPORT
OF DEFENDANTS' OPPOSITION TO
PLAINTIFFS' SUPPLEMENTAL
MOTION FOR CLASS
CERTIFICATION**

[REDACTED PUBLIC VERSION]

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4
5

6 IN RE: HIGH-TECH EMPLOYEE)
7 ANTITRUST LITIGATION)
8) No. 11-CV-2509-LHK
9 THIS DOCUMENT RELATES TO:)
10 ALL ACTIONS.)
11 _____)
12
13

14 HIGHLY CONFIDENTIAL
15 VIDEO DEPOSITION OF KEVIN HALLOCK
16 June 7, 2013
17
18

19 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR
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09:33:12 1 information from the compensation systems from the
09:33:14 2 defendant companies in preparing my report, but I wasn't
09:33:19 3 estimating damages. I wasn't asked to do that. Or
09:33:25 4 magnitudes.

09:33:29 5 MR. KIERNAN: Q. Did you examine the
09:33:41 6 individual compensation -- strike that.
09:33:43 7 Did you examine the compensation data for individual
09:33:47 8 employees at the defendant companies?

09:33:55 9 A. I certainly saw some individual compensation
09:33:58 10 data. There were some in some of the depositions, or
09:34:02 11 some of the emails. I guess those would have been
09:34:05 12 exhibits to depositions. There was occasional reference
09:34:09 13 to individual compensation for an individual, for
09:34:13 14 example.

09:34:15 15 I remember a case where someone was -- can't
09:34:19 16 remember which defendant company he was from, but where
09:34:24 17 someone was offered \$500,000 of some sort of
09:34:29 18 compensation. I think it was restricted stock. So
09:34:33 19 that's an example of a specific compensation data from
09:34:36 20 individuals, but I certainly didn't examine -- didn't
09:34:41 21 have compensation levels of all the employees.

09:34:44 22 Q. Did you have access to it?

09:34:45 23 A. No.

09:34:48 24 Q. How many employees are in the class?

09:34:53 25 A. I don't know.

09:34:56 1 Q. How many employees at Intel are in the class?

09:35:00 2 A. I don't know how many employees are -- at Intel
09:35:03 3 are in the class.

09:35:04 4 Q. Okay. Did you examine the compensation data
09:35:07 5 for each of the employees at Intel that are in the
09:35:10 6 class?

09:35:14 7 MS. DERMODY: Object to form.

09:35:25 8 THE WITNESS: I don't -- I certainly don't
09:35:26 9 remember examining individual -- I didn't -- I don't
09:35:32 10 remember examining individual data for large numbers of
09:35:36 11 people, which I think is what you are suggesting. So I
09:35:38 12 didn't have access to everyone's compensation, for
09:35:41 13 example, for -- of a particular job group or job family
09:35:46 14 or occupation or for the whole company.

09:35:50 15 MR. KIERNAN: Q. Did you ask for access to
09:35:52 16 that data?

09:35:55 17 A. No. I think I asked for -- what may be related
09:36:21 18 is I was wondering about structures and compen- -- you
09:36:24 19 know, information about --

09:36:32 20 Q. Design?

09:36:34 21 A. Well, design is one aspect. But what I was
09:36:36 22 interested in is not individual person data, which is I
09:36:40 23 think what you are asking about.

09:36:41 24 What I was interested in more was for
09:36:44 25 particular groups, you might call them a job family or a

09:36:49 1 job grade, I was interested to see, for example, whether
09:36:52 2 there was a minimum, a midpoint, a maximum in a
09:36:58 3 particular group. I was interested in those kinds of
09:37:00 4 data. But individual data weren't necessary for what I
09:37:04 5 was doing.

09:37:05 6 Q. Why not?

09:37:10 7 A. Because I was -- I was really asked two
09:37:17 8 questions, and I didn't think that that would be
09:37:19 9 necessary to answer those questions.

09:37:21 10 Q. What were the two questions that you were asked
09:37:23 11 to answer?

09:37:24 12 A. One of the questions was about whether the
09:37:27 13 organizations, the seven defendant firms, had formalized
09:37:36 14 sort of the administrative pay systems. And that might
09:37:45 15 not be precisely the wording, but that's basically the
09:37:47 16 idea.

09:37:47 17 And the other main question was whether the
09:37:54 18 agreements in question in the case, these -- sort of
09:38:00 19 what I refer to in the report and what others are
09:38:03 20 referring to as no-cold-call agreements -- could have a
09:38:07 21 suppressive effect on compensation of people in the
09:38:13 22 defendant firms. Employees in the defendant firms.

09:38:22 23 So those are the main questions. I mean, I had
09:38:25 24 to observe additional conclusions that I thought were
09:38:27 25 relevant and related, but those were the two main

09:38:31 1 questions that I can recall working on.

09:38:38 2 Q. And with respect to the second question,
09:38:49 3 whether the agreements in the case could have a
09:38:54 4 suppressive effect on compensation for people at the
09:39:01 5 defendant firms, it's your opinion that the compensation
09:39:07 6 data for the individual employees is unnecessary to
09:39:12 7 answer that question?

09:39:14 8 MS. DERMODY: Object to the form.

09:39:16 9 THE WITNESS: I think I could answer the two
09:39:20 10 questions that were -- that I was -- that were posed
09:39:24 11 with the information that I had available to me.

09:39:27 12 MR. KIERNAN: Q. And so your opinion is
09:39:29 13 that the individual -- the compensation data for
09:39:32 14 individual employees is unnecessary to answer those
09:39:34 15 two questions?

09:39:37 16 MS. DERMODY: Object to the form.

09:39:38 17 THE WITNESS: I think that -- again, I think I
09:39:41 18 said that I could answer those questions with the data
09:39:44 19 that I had. I didn't have everyone's compensation.

09:39:51 20 MR. KIERNAN: Q. Would one way to test the
09:39:53 21 conclusions that you reached have been to look at
09:39:57 22 the actual compensation data of the employees?

09:40:15 23 A. I think it depends, because there are multiple
09:40:17 24 things that I was looking at. Knowing the actual level
09:40:25 25 of compensation for individuals wouldn't necessarily

09:40:28 1 tell you if there are formalized -- wouldn't have all
09:40:32 2 the information that are involved. Lots of the
09:40:35 3 characteristics, markers of formalized pay system. So
09:40:40 4 just knowing the compensation level of some employees
09:40:42 5 wouldn't be suggestive of some of the other issues that
09:40:45 6 I found relevant to the case, for example, internal
09:40:49 7 equity concerns. Again, minima, maxima, using external
09:40:57 8 market data.

09:41:03 9 I don't know if I answered that.

09:41:08 10 Q. Are there ways in which you could have used
09:41:16 11 individual compensation data to test the conclusions you
09:41:19 12 reached?

09:41:25 13 A. I was -- let me think about that. I was asked
09:41:29 14 to have an opinion about whether there were formalized
09:41:35 15 systems, A, again, I'm paraphrasing, and whether I
09:41:38 16 was -- whether you could -- whether these kinds of
09:41:42 17 no-cold-call agreements could be -- could lead to the
09:41:48 18 suppressive effects. And I didn't -- you know, I wasn't
09:41:55 19 asked to estimate or think about the magnitude of those.
09:42:03 20 So I didn't concentrate on that. The question that you
09:42:06 21 are posing. It's a different question.

09:42:08 22 Q. Were you asked to determine whether all or
09:42:11 23 nearly all class members were actually impacted by the
09:42:14 24 no-cold-call agreements?

09:42:27 25 A. Was I asked whether the no-cold-call agreements

09:42:34 1 actually impacted? No.

09:42:37 2 Q. And you haven't answered that question?

09:42:42 3 A. I haven't estimated the magnitudes in any way.

09:42:47 4 Q. I don't think that was the question I asked.

09:42:49 5 A. Okay.

09:42:50 6 Q. You said you were not asked to determine
09:42:53 7 whether all or nearly all class members were actually
09:42:57 8 impacted by the no-cold-call agreements; is that
09:42:59 9 correct?

09:43:03 10 A. I was not asked whether they were actually
09:43:07 11 impacted.

09:43:08 12 Q. So you have not answered that question in your
09:43:11 13 report?

09:43:15 14 MS. DERMODY: Is that a question?

09:43:16 15 MR. KIERNAN: Uh-huh. Yeah. Thanks.

09:43:20 16 THE WITNESS: I haven't asked whether they
09:43:21 17 were -- sorry. I haven't asked -- sorry.

09:43:24 18 MR. KIERNAN: Q. That's okay.

09:43:25 19 A. I haven't answered whether they were actually
09:43:29 20 impacted.

09:43:31 21 Q. Where are you currently employed?

09:43:33 22 A. At Cornell University.

09:43:35 23 Q. Any other employment outside of Cornell?

09:43:47 24 A. I have, from time to time, have consulting
09:43:53 25 engagements. I don't know if you -- if that's

09:43:56 1 employment or not precisely.

09:43:58 2 Q. Fair enough. Particularly sitting next to an
09:44:01 3 employment lawyer.

09:44:06 4 A. So about other income, for example. It's
09:44:12 5 expected.

09:44:14 6 So from time to time, I'm asked to participate
09:44:17 7 in a consulting project of one kind or another, although
09:44:22 8 I don't do them very often. I -- so, yes. I don't
09:44:29 9 know -- I don't think you asked a yes or no answer, but
09:44:32 10 I have other income independent of my Cornell income, I
09:44:34 11 think is what you were asking, or what you were going
09:44:37 12 toward. I'm sorry.

09:44:40 13 Q. Yes. Thank you.

09:44:42 14 And what percentage of your income is from
09:44:44 15 litigation-related matters?

09:44:46 16 A. Well, this is the -- this, currently, right
09:44:51 17 now, is the third time I've been deposed. I typically
09:44:57 18 don't do cases in litigation. I think I did one eight
09:45:02 19 years ago, one a couple of years ago, and this one with
09:45:10 20 depositions.

09:45:13 21 From time to time there was a smaller one.
09:45:16 22 There was a dispute earlier this year where I commented
09:45:19 23 on something, but I wasn't deposed. It was settled sort
09:45:22 24 of after I made some comment. But this is the third
09:45:26 25 time that I've been deposed.

12:06:30 1 THE WITNESS: I'm sorry. I didn't hear the
12:06:31 2 question. I didn't hear the first part of what you
12:06:34 3 said.

12:06:34 4 MR. KIERNAN: Q. You said the first -- the
12:06:35 5 first point, the first part of the assignment is
12:06:39 6 really related to the second point.

12:06:41 7 A. Yeah.

12:06:41 8 Q. Those were your words.

12:06:43 9 A. Yes.

12:06:44 10 Q. And what I asked was, the first part of the
12:06:48 11 assignment that's related to the second point, is that
12:06:51 12 identifying the features that forms the basis of your
12:06:55 13 second opinion?

12:06:59 14 A. Part of the -- part of the second -- I have
12:07:05 15 lots of opinions. But part of the assignment about
12:07:10 16 whether suppressing wages would lead to suppression --
12:07:16 17 whether these practices would lead to suppression of
12:07:19 18 wages in the firms is related to features of formal pay
12:07:23 19 systems.

12:07:26 20 But just having -- right. Right. I mean,
12:07:37 21 they're obviously related. This is all about
12:07:40 22 compensation.

12:07:56 23 Q. Now, you agree that with a formal pay system,
12:07:59 24 it's likely that not all people doing the same job
12:08:03 25 within a firm are all paid the same salary?

12:08:10 1 A. Could you say it again. I'm sorry.

12:08:12 2 Q. In fact, I'm -- if you go to paragraph 37 of
12:08:16 3 your report.

12:08:17 4 A. Okay.

12:08:22 5 Q. You state, "Even in a formal pay structure, it
12:08:25 6 is likely that not all people doing the same job within
12:08:27 7 a firm are all paid the same salary."

12:08:30 8 A. Okay. Yes. I'm sorry.

12:08:31 9 Q. And, "There are a wide variety of reasons for
12:08:33 10 this."

12:08:34 11 What are the reasons?

12:08:36 12 A. Okay. So what are the reasons -- what are
12:08:38 13 reasons for it being the case that not all people doing
12:08:41 14 the same job are paid the same salary.

12:08:46 15 One might be that one of those people is -- has
12:09:03 16 higher level of training in that area or is more
12:09:05 17 experienced with clients in that area or knows -- has
12:09:08 18 been doing that longer. Another may be some
12:09:16 19 organizations, including, I believe, some government
12:09:23 20 organizations, will pay more if people have a higher
12:09:26 21 level of education.

12:09:27 22 So I know for certain state workers having a
12:09:33 23 master's degree, pay that worker in the same job more
12:09:37 24 than without their master's degree. State police
12:09:40 25 officers in some states, for example.

12:09:46 1 So there are people who are basically in the
12:09:47 2 same job who are -- they're not all paid the same
12:09:49 3 salary, even though that's a structure that's very
12:09:54 4 formalized. The state police -- you can imagine a state
12:09:59 5 police structure, I don't know them all, but imagine
12:10:01 6 them looking like figure 1 in this report, which is a
12:10:08 7 government pay grid.

12:10:09 8 Some school teachers with unionized contracts,
12:10:11 9 you can pick out one's wage by knowing their two axes;
12:10:15 10 years of experience and degrees. If you know those two,
12:10:19 11 you know precisely what one is paid at a given point in
12:10:23 12 time. And they're all teachers.

12:10:26 13 Q. Do you agree that the pay for an individual
12:10:28 14 will depend, in part, on how the individual manager
12:10:33 15 weighs the different factors that are relevant to the
12:10:39 16 individual's pay?

12:10:40 17 MS. DERMODY: Object to form.

12:10:45 18 THE WITNESS: Would I agree that -- I would
12:10:47 19 agree that a manager's opinions are certainly a part of
12:10:53 20 what one's pay change will be from one -- one pay time
12:10:56 21 to the next, say, every -- per year. And managers do
12:11:04 22 have some discretion over that. There is certainly --
12:11:11 23 absolutely.

12:11:12 24 MR. KIERNAN: Q. And then different
12:11:14 25 managers can exercise their discretion differently.

12:11:18 1 MS. DERMODY: Object to form.

12:11:23 2 THE WITNESS: Again, as I said in the example I
12:11:24 3 used earlier, it's a stark example, but managers can --
12:11:27 4 sometimes people do things they shouldn't be doing. So
12:11:32 5 one manager could discriminate against a worker or group
12:11:37 6 of workers. And typically in well-functioning
12:11:41 7 organizations that doesn't happen, but that can happen.

12:11:44 8 MR. KIERNAN: Q. But another alternative
12:11:46 9 or possibility is that two managers weigh the same
12:11:50 10 factors differently. Give different weight to the
12:11:52 11 same factors. Isn't that a possibility?

12:11:54 12 MS. DERMODY: Object to form.

12:12:06 13 THE WITNESS: I think -- are you asking me in
12:12:08 14 general? In general, managers make different decisions
12:12:13 15 faced with the same information. So you might be
12:12:15 16 deciding on which two products to launch, and one
12:12:18 17 manager might feel it's important to go with one and one
12:12:21 18 with another.

12:12:22 19 MR. KIERNAN: Q. I don't care about
12:12:23 20 products. I'm talking about compensation.

12:12:25 21 A. So could two managers facing the same
12:12:29 22 information make -- I think on the margins, people might
12:12:34 23 not make precisely the same decision in exactly -- in
12:12:40 24 precisely the same instance, but they're all following
12:12:45 25 an administrative formal structure and protocol.

12:12:48 1 And often there are recommended --
12:12:55 2 recommendations for how to translate pay changes. And
12:13:02 3 there is also a sort of chain of command. There is
12:13:08 4 sometimes a second look on a particular compensation
12:13:10 5 decision.

12:13:14 6 Q. And let's take Adobe. What were the factors
12:13:17 7 that managers at Adobe considered in deciding the
12:13:22 8 compensation for an individual?

12:13:25 9 A. I think Adobe -- what are the factors Adobe --
12:13:30 10 people at Adobe used. I'm just turning to Adobe here to
12:13:35 11 remind myself.

12:13:44 12 Factors included external market data, as they
12:13:46 13 did in all defendant firms. That was one factor.

12:13:49 14 Q. Your opinion is that each and every manager,
12:13:52 15 when making a compensation decision, considered external
12:13:55 16 market data?

12:13:57 17 A. I don't know what each and every manager did.

12:13:59 18 Q. How would you determine that?

12:14:01 19 A. How would I determine what each and every
12:14:03 20 manager did?

12:14:04 21 Q. Yeah.

12:14:07 22 A. I don't know how I'd do that because there are
12:14:09 23 lots of managers.

12:14:10 24 Q. How many?

12:14:14 25 A. I would --

01:41:19 1 A. I think the -- the term rigid could be used --
01:41:21 2 you know, I think it's like back to what you were asking
01:41:26 3 before; pay versus compensation, formal versus
01:41:29 4 structured. Rigid -- I'm just not sure about rigid.
01:41:34 5 But rigid, could probably use that in a structured
01:41:37 6 sense.

01:41:38 7 Q. Is there a generally accepted definition of
01:41:42 8 rigid or rigidity with respect to compensation
01:41:46 9 structures in your field?

01:41:49 10 A. Again, I don't know if there is some threshold
01:41:52 11 that one would cross to be called rigid versus not, so I
01:41:55 12 don't really know.

01:41:56 13 Q. Any research that you are aware of on that
01:41:58 14 issue?

01:41:58 15 A. Not that I'm aware of.

01:41:59 16 Q. Have you researched the issue?

01:42:01 17 A. Sort of definition of -- no.

01:42:05 18 Q. What does -- or what is a somewhat rigid
01:42:09 19 compensation structure?

01:42:11 20 MS. DERMODY: Object to form.

01:42:13 21 MR. KIERNAN: Q. Strike that.

01:42:15 22 Have you heard of the term "somewhat rigid
01:42:17 23 compensation structure" in the field of -- in your
01:42:21 24 field?

01:42:24 25 A. Somewhat rigid. I may have used the term

01:42:28 1 somewhat rigid pay structure. So I probably have heard
01:42:31 2 of it because I've probably written it somewhere at one
01:42:34 3 point or another.

01:42:35 4 Q. And do you recall where you would use that
01:42:37 5 term?

01:42:38 6 A. I may have used it in here, actually, but I
01:42:40 7 don't know.

01:42:47 8 Q. You don't.

01:42:48 9 A. Okay. You know, just in the sense rigid,
01:42:51 10 formalized, I think they could be synonyms in certain
01:42:54 11 applications of that. So I can't recall any specific
01:42:56 12 examples.

01:42:56 13 Q. And are there any generally accepted standards
01:43:01 14 to -- that you use to determine if a pay system or
01:43:07 15 compensation system is rigid?

01:43:12 16 A. Again, I think that that's a -- I'm thinking
01:43:16 17 about the use of rigid that an engineer would. So there
01:43:19 18 is some probably measure of rigidity. And if it's over
01:43:23 19 some scale or temperature or whatever it is, then
01:43:26 20 therefore it's rigid or not. And I don't think of that
01:43:28 21 in compensation, no.

01:43:31 22 Q. Can you think of any compensation structure
01:43:34 23 that you would consider rigid?

01:43:39 24 MS. DERMODY: Object to form.

01:43:44 25 THE WITNESS: I imagine I could think of a

01:43:46 1 compensation structure that I think of as rigid.

01:43:48 2 MR. KIERNAN: Q. Give me an example.

01:43:50 3 A. I think the one that we talked earlier of
01:43:54 4 public schoolteachers where on the horizontal axis -- I
01:44:00 5 can't remember which axis I used before -- but if you
01:44:02 6 have a bachelor's degree and then a master's degree,
01:44:05 7 degrees toward -- and then going down the vertical axis,
01:44:13 8 years of experience, that's quite rigid. You just sort
01:44:17 9 of pick it right out. There is sort of no leeway in
01:44:20 10 that. It's just -- you've just picked these things out
01:44:23 11 if you know two characteristics of the worker.

01:44:26 12 Q. Sort of like what you have set forth in
01:44:27 13 figure 1 for the government pay scale.

01:44:32 14 A. That, I think, is a little different. It's
01:44:36 15 related. Same picture. I mean, in the sense that it's
01:44:38 16 got --

01:44:39 17 Q. Right.

01:44:39 18 A. But I think the axes will be labeled a bit
01:44:42 19 differently. And the only reason I give pause to that
01:44:45 20 is these are grades and steps in figure 1. What I
01:44:49 21 called figure 1. And I'm not sure how it works. This
01:44:53 22 could be used globally by -- this is the locality pay
01:44:57 23 area of Washington, Baltimore, Northern Virginia, blah,
01:45:05 24 blah, blah.

01:45:07 25 (Reporter clarification.)

01:45:11 1 THE WITNESS: I'm sorry, I'm just reading. For
01:45:11 2 the locality pay area of Washington, Baltimore and so
01:45:11 3 on.

01:45:12 4 This isn't precisely the same because one,
01:45:14 5 maybe there is a promotion. You could get promoted from
01:45:15 6 step 3 to step 5, and I don't see these as clearly
01:45:18 7 defined.

01:45:18 8 In the example I gave you with schoolteachers,
01:45:20 9 you just needed to know education and years of
01:45:25 10 experience. Maybe in that school district, or maybe in
01:45:28 11 all, I don't know how they're done, and you could pull
01:45:31 12 that right out. This one I think is -- it's a little
01:45:32 13 different than that. It's the same picture. Same kind
01:45:35 14 of -- it's the same diagram, different axes.

01:45:38 15 MR. KIERNAN: Q. So in your example, the
01:45:41 16 tenure would then determine the individual's pay?

01:45:47 17 A. In the example of the --

01:45:49 18 Q. School --

01:45:49 19 A. -- hypothetical school system I talked about --
01:45:51 20 school structure I talked about, conditional on a level
01:45:54 21 of education, the tenure would determine.

01:45:58 22 So if you knew someone had a bachelor's degree,
01:46:00 23 you would just need to know the years of tenure or
01:46:03 24 experience. I'm using tenure as in the firm and
01:46:06 25 experience overall.

01:46:07 1 But the other thing you would need to know is
01:46:10 2 the level of education.

01:46:11 3 Q. And then what's an example of a somewhat rigid
01:46:16 4 compensation system?

01:46:18 5 MS. DERMODY: Object to form.

01:46:22 6 THE WITNESS: Again, I think that --

01:46:24 7 MR. KIERNAN: Q. Strike that.

01:46:24 8 A. Okay.

01:46:25 9 Q. As you used "somewhat rigid compensation
01:46:27 10 system" in your writings that you referred to before,
01:46:31 11 what's an example of a somewhat rigid compensation
01:46:35 12 system?

01:46:35 13 A. I didn't refer to using somewhat restricted in
01:46:39 14 my writings. I thought I may have said it or written it
01:46:42 15 or talked about it.

01:46:42 16 Q. Okay. Have you ever used that term?

01:46:44 17 A. I don't know if I have in writing. I write a
01:46:48 18 lot.

01:46:50 19 And, I'm sorry, could you say the question
01:46:53 20 again? Oh, I think I know. I think you are -- I'm
01:46:55 21 sorry. Go ahead. I should ask you precisely.

01:46:58 22 Q. You are reading my mind.

01:46:59 23 A. Okay.

01:47:00 24 Q. You are.

01:47:01 25 A. All right.

01:47:02 1 Q. What's an example of a somewhat rigid
01:47:05 2 compensation structure?

01:47:10 3 A. Well, I gave you an example of a rigid one. I
01:47:12 4 could go on a somewhat rigid one would be one that
01:47:15 5 was -- had some leeway relative to the schoolteacher one
01:47:20 6 I had before. So it could be that there is some
01:47:24 7 flexibility over how well you taught your courses. Or
01:47:31 8 there was some subjective performance evaluation or
01:47:34 9 objective performance evaluation that went beyond that.
01:47:36 10 And there could be some special additional compensation
01:47:41 11 given to the teacher and so on for one thing or another.
01:47:44 12 So it's not precisely that. It's just there is some
01:47:47 13 more complication to that.

01:47:48 14 Q. Okay.

01:47:49 15 A. I gave you that one as rigid is just sort of
01:47:51 16 the easiest way to see.

01:47:53 17 Q. And I know I asked this before, but now that
01:47:56 18 we've talked about it a little bit more, are there any
01:47:58 19 metrics that are generally accepted to determine whether
01:48:01 20 or not a compensation system is rigid?

01:48:09 21 A. You know, again, I can't think of any sort of
01:48:12 22 single barometer or temperature or -- but there are
01:48:16 23 things, features, that -- I gave you an example of the
01:48:21 24 most rigid one where you can pick things out right away,
01:48:24 25 given some characteristics. I think the more pinpointed

01:52:50 1 see how things are looking, and you make an offer.

01:52:52 2 That's kind of a formal system. They're not just saying

01:52:55 3 to the external candidates only, what is your other

01:52:57 4 salary, what were you making before, but that's an

01:53:01 5 example of a formal -- something that's associated with

01:53:05 6 these -- these kinds of systems.

01:53:09 7 Q. If you look down at paragraph 87.

01:53:13 8 A. Yep.

01:53:14 9 Q. In the last line and you are quoting

01:53:18 10 Mr. Stubblefield.

01:53:22 11 A. Uh-huh.

01:53:23 12 Q. You quote, "If we saw attrition in some area,

01:53:26 13 we'd use -- we use retention bonuses proactively to try

01:53:32 14 to secure, lock in, create incentive for other talent to

01:53:35 15 stay."

01:53:36 16 Do you see that?

01:53:37 17 A. I see that quote, yes.

01:53:39 18 Q. And is it your understanding that Intuit

01:53:44 19 managers had at their discretion the ability to pay a

01:53:48 20 bonus to retain particular individuals?

01:53:54 21 A. I'm sorry, could you say it again? I want to

01:53:56 22 know if you said policy.

01:53:58 23 Q. Is it your understanding that Intuit managers

01:54:00 24 had at their discretion the ability to pay bonus to

01:54:04 25 retain particular employees?

01:54:05 1 MS. DERMODY: Object to form.

01:54:06 2 THE WITNESS: I don't know in general, but I
01:54:07 3 know based on this quote that Mr. Stubblefield said if
01:54:10 4 we saw attrition in some area we'd use retention bonuses
01:54:18 5 proactively. So someone was using retention bonuses.

01:54:24 6 MR. KIERNAN: Q. Do you know if all
01:54:25 7 managers at Intuit had that discretion?

01:54:27 8 A. Again, I don't know what all managers had
01:54:28 9 available to them.

01:54:30 10 Q. You are using this as an example, however, that
01:54:33 11 Intuit had a formal pay system, right?

01:54:41 12 A. Well, it's in the section -- let me just make
01:54:43 13 sure -- I want to make sure I'm being careful, seeing
01:54:46 14 where I am.

01:54:47 15 I just want -- it is in the section that had
01:54:50 16 Defendants had Formalized Pay Systems. And one thing
01:54:53 17 that I think is noteworthy in that is that right above
01:55:01 18 that, Mr. Stubblefield said we tried to benchmark every
01:55:05 19 job that we can, which is -- so that's why I'm --

01:55:07 20 Q. So why did you include that sentence?

01:55:10 21 A. Benchmark --

01:55:10 22 Q. No. The sentence if we saw attrition --

01:55:13 23 A. Oh, I thought --

01:55:14 24 Q. -- we may use retention bonuses.

01:55:18 25 No, you switched gears on me. I want to focus

01:55:21 1 on the sentence about retention bonuses.

01:55:24 2 A. Okay.

01:55:25 3 Q. Are you referring to that as evidence that
01:55:29 4 Intuit had a formal pay system?

01:55:31 5 A. Not necessarily.

01:55:32 6 Q. Why did you include it?

01:55:35 7 A. It says here, in addition he noted.

01:55:38 8 Maybe I was thinking at that -- at the time
01:55:48 9 that he's talking about other talent to stay, on the
01:55:52 10 sort of fact that doing one thing for one person is
01:55:56 11 related to this issue of internal equity, which is not
01:55:59 12 actually in this section. But where if you do one thing
01:56:02 13 for one person, you have additional incentive to do it
01:56:05 14 for someone else. I'm not really sure about that
01:56:11 15 sentence, actually.

01:56:14 16 MS. DERMODY: There is no question pending.

01:56:18 17 MR. KIERNAN: Q. If a manager at Intuit
01:56:21 18 used a retention bonus to retain an employee, is it
01:56:27 19 your opinion that Intuit would then give every
01:56:31 20 employee in the company a raise?

01:56:45 21 A. No.

01:56:46 22 Q. And how would you make that determination if
01:56:48 23 the payment of a retention bonus would impact the
01:56:53 24 compensation of all or nearly all Intuit employees?

01:57:00 25 A. How would I make the determination if a

01:57:03 1 retention bonus impacted everyone?

01:57:04 2 Q. Yeah. What would you do?

01:57:06 3 A. I don't know. That seems -- what would I do to
01:57:21 4 determine if a retention bonus impacted everyone.

01:57:26 5 Well, if I wanted to know if it impacted
01:57:28 6 everyone, I'd want to know what everyone's pay was.

01:57:31 7 Q. Okay. So that's -- let's make a list. So you
01:57:34 8 would want to know what everyone else's pay was?

01:57:37 9 A. Well, if I wanted to know what the impact -- if
01:57:39 10 it actually happened, which is I think what you are
01:57:42 11 asking, I'd want to know what their pay was.

01:57:44 12 Q. Okay. What else?

01:57:46 13 MS. DERMODY: Object to form.

01:57:47 14 THE WITNESS: Yeah. Again, I think you are
01:57:49 15 asking me to prepare a study of something that I --
01:57:55 16 that's not what I was doing. So I'd want to think about
01:57:59 17 that a little bit. But that seems like a relevant piece
01:58:01 18 of information, anyway, to start.

01:58:02 19 MR. KIERNAN: Q. This morning you
01:58:03 20 mentioned Dr. Leamer was looking at that issue.
01:58:06 21 What should Dr. Leamer look at?

01:58:08 22 MS. DERMODY: Object to form.

01:58:10 23 THE WITNESS: Again, what should Dr. Leamer
01:58:13 24 look at?

01:58:15 25 MR. KIERNAN: Q. To answer the question if

01:58:16 1 the payment of a retention bonus would impact all or
01:58:19 2 nearly all Intuit employees.

01:58:22 3 A. I don't --

01:58:22 4 MS. DERMODY: Object to form.

01:58:23 5 THE WITNESS: Again, I don't --

01:58:25 6 MR. KIERNAN: Q. Don't know?

01:58:26 7 THE WITNESS: It's not that I don't know, I
01:58:27 8 would just -- it's something I would want to think
01:58:28 9 about. Like what would he do. And that's not really
01:58:30 10 what I was asked to do here.

01:58:33 11 MR. KIERNAN: Q. If you were asked to do
01:58:34 12 it --

01:58:35 13 A. Okay.

01:58:35 14 Q. -- plaintiffs retained you and asked you,
01:58:37 15 Dr. Hallock, we'd like you to determine if the impact of
01:58:46 16 compensation to some employees impacted all employees or
01:58:50 17 nearly all employees at Intuit, what would you do?

01:58:53 18 MS. DERMODY: Object to form.

01:58:55 19 THE WITNESS: If I were asked to do that, which
01:58:57 20 is a statistical study of magnitudes and so on, I would
01:59:01 21 spend a long time thinking about it. And -- we
01:59:07 22 referenced a paper this morning that I talked about,
01:59:11 23 it's 2012, I started a decade ago. Takes a long time.
01:59:16 24 Doesn't take that long to do these things, obviously.

01:59:18 25 MR. KIERNAN: Q. But it could take up to a

01:59:20 1 decade?

01:59:21 2 MS. DERMODY: Object to form.

01:59:21 3 THE WITNESS: No, certainly not. Part of the
01:59:23 4 reason I haven't done that is I just dropped that paper
01:59:25 5 for a long time. Tried to work on it again last year.

01:59:32 6 Just empirical work is a different --
01:59:35 7 statistical work is a different kind of thing, which is
01:59:37 8 not what I was doing in this case. So it's a very
01:59:40 9 careful craft that I haven't thought about in this
01:59:44 10 particular example.

01:59:45 11 MR. KIERNAN: Q. Now, you mentioned in
01:59:47 12 your answer you would have to do a statistical study
01:59:51 13 of magnitudes. What do you mean by that?
01:59:54 14 Magnitudes.

01:59:56 15 A. Well, I think you were asking about what
01:59:58 16 actually happened. That was the distinction you were
02:00:02 17 making this morning. I'm thinking about magnitudes, so
02:00:05 18 I didn't do that here.

02:00:07 19 But when you are doing a statistical -- an
02:00:10 20 example of a statistical study would be to say, for
02:00:12 21 example, were the wages of men higher than the wages of
02:00:16 22 women. Then you would compute the average wage of men
02:00:21 23 and the average wage of women, and that would be an
02:00:23 24 example of the magnitude.

02:00:26 25 Q. So zero to up to something else?

02:00:30 1 A. Well, maybe negative --

02:00:31 2 Q. Or negative.

02:00:32 3 A. -- positive. So the men could be earning less.

02:00:36 4 So not just zero. I wouldn't bound it by zero.

02:00:39 5 Q. And as you sit here today -- strike that.

02:00:40 6 And you've said you've done event studies

02:00:43 7 before to determine magnitudes?

02:00:48 8 A. I -- I've done an event study before, yes.

02:00:51 9 Q. And have you done it outside of litigation?

02:00:53 10 A. Yes.

02:00:55 11 Q. And have -- outside of litigation, have you

02:00:58 12 used statistical methods or tolls to determine the

02:01:03 13 impact of -- on compensation of certain events or

02:01:07 14 actions?

02:01:10 15 A. I've used statistical methods -- I want to

02:01:13 16 separate out event study is a particular type of --

02:01:17 17 Q. Sure. And that's why actually I broadened it

02:01:20 18 out.

02:01:20 19 A. Okay.

02:01:20 20 Q. I appreciate the clarification.

02:01:23 21 A. I've used event studies in the litigation we

02:01:25 22 talked about earlier. I've also used event studies in a

02:01:28 23 couple of other papers on the relationship between other

02:01:34 24 labor market events and stock prices, because that's a

02:01:36 25 stock price thing.

02:05:07 1 men -- in the study it told you where employees were
02:05:11 2 allowed to choose their mix of pay. What was the
02:05:13 3 fraction of men who chose -- what fraction did -- sorry.

02:05:20 4 Among men, what fraction chose -- I'm sorry,
02:05:26 5 I'm having trouble saying it. What was the fraction of
02:05:29 6 total pay that came in the form of salary among men.

02:05:32 7 MR. KIERNAN: Q. Oh, okay.

02:05:33 8 A. You just might want to know the number. I have
02:05:35 9 trouble articulating that. I'm sorry. And what is the
02:05:38 10 fraction among women. And it was higher among women.
02:05:43 11 And then you might want to know whether they're
02:05:45 12 specifically different or not. But it sort of depends
02:05:49 13 on what you are doing. There, it was sort of curious at
02:05:52 14 that stage of that project, very preliminary stage, you
02:05:54 15 know, is there a difference.

02:05:57 16 And so I wouldn't say in general that something
02:06:02 17 has to be significant or not. Depends on what is the
02:06:04 18 context.

02:06:10 19 Q. In using a regression to determine the impact
02:06:26 20 of some action or event, is there some rule of thumb
02:06:32 21 about the required number of observations that one would
02:06:39 22 need to provide a reliable result?

02:06:44 23 MS. DERMODY: Object to form.

02:06:45 24 THE WITNESS: Again, that's a -- you know,
02:06:47 25 there are so many --

02:06:50 1 MR. KIERNAN: Q. Could you have just two
02:06:51 2 observations?

02:06:52 3 MS. DERMODY: Object to form.

02:06:55 4 THE WITNESS: Could you ask the question with
02:06:57 5 the two observations in it?

02:06:59 6 MR. KIERNAN: Q. Yeah. If you used a
02:07:01 7 regression to estimate the impact of some action on
02:07:09 8 a -- let's say compensation, would having just two
02:07:15 9 observations be sufficient?

02:07:18 10 MS. DERMODY: Object to form.

02:07:20 11 THE WITNESS: I'm sure you -- are we
02:07:27 12 controlling for variables in this regression? Well, you
02:07:30 13 can't have more independent variables in the regression
02:07:34 14 than you have observations. So I hope that answered
02:07:38 15 the -- I can't remember what the -- which side of the
02:07:40 16 question --

02:07:41 17 MR. KIERNAN: Q. Yeah. And -- the more
02:07:44 18 observations you have, the more precision you'll
02:07:47 19 have, all things being equal, if the regression is
02:07:52 20 correctly specified?

02:08:03 21 A. You are asking me a bunch of statistical
02:08:04 22 questions, and I'm not -- I'm sort of not sure why. I
02:08:12 23 didn't do any statistics.

02:08:15 24 Q. That's the fun of the deposition.

02:08:17 25 A. Okay. Could you ask the question again.

02:08:21 1 MS. DERMODY: You are correct.

02:08:23 2 THE WITNESS: No, I....

02:08:25 3 MR. KIERNAN: Q. Yeah. I asked --

02:08:29 4 A. Well, let me try to answer the question. I
02:08:31 5 think it was about numbers of observations. I think
02:08:34 6 that given a -- given an increasing -- I think what you
02:08:40 7 are asking is whether increasing observations, generally
02:08:46 8 holding other things constant, might help improve
02:08:49 9 precision. I think that's what you are asking. And I
02:08:51 10 think that's, you know, in a general sense, that seems
02:08:53 11 reasonable.

02:09:00 12 Q. If a company has an informal pay system --
02:09:03 13 you've talked about formal pay systems, now let's talk
02:09:08 14 about a company that has an informal pay system. You
02:09:12 15 follow me? Are you with me?

02:09:16 16 A. Maybe. I don't know where -- what you are
02:09:19 17 going to say.

02:09:20 18 Q. I just want to start with the -- start the
02:09:23 19 question with the predicate that we're going to talk
02:09:25 20 about a company that has an informal pay system.

02:09:29 21 A. Okay. So not the defendants.

02:09:32 22 Q. Or anyone else that has a formal --

02:09:35 23 A. Okay.

02:09:35 24 Q. -- formalized -- what you've described as a
02:09:43 25 formalized pay system.

02:18:11 1 Q. Right. Keep reading.

02:18:12 2 A. In particular, restrictions on cold calling
02:18:15 3 hamper compensation levels for employees, and the
02:18:17 4 restrictions could be expected to hamper levels of
02:18:20 5 compensation for those who would have been cold called
02:18:23 6 and for all or nearly all salaried employees of
02:18:26 7 defendant firm. So that I think is what you were
02:18:28 8 referring to.

02:18:30 9 Q. That's right.

02:18:30 10 A. I just -- you said it a little bit differently
02:18:33 11 and I just wanted to make clear that this is what I
02:18:36 12 said.

02:18:37 13 Q. Right. But -- and then later in your report
02:18:39 14 you note that you're reaching an opinion that it could
02:18:47 15 impact all or nearly all salaried employees including
02:18:50 16 the technical class.

02:18:52 17 A. That's right. There is a section I write on
02:18:54 18 the technical class. I refer to the technical class in
02:18:59 19 some parts of the report.

02:19:02 20 Q. During the time period in which you were
02:19:05 21 examining, the 2005 to 2009 period, how many employees
02:19:10 22 were at Intel?

02:19:14 23 MS. DERMODY: Object to form.

02:19:15 24 THE WITNESS: Again, I can't remember the --
02:19:17 25 I'm just guessing -- I would be guessing again. We

02:19:21 1 talked about this earlier on the size of -- I think we
02:19:23 2 talked about this earlier -- on the size of the
02:19:25 3 organizations. And they varied in terms of the number
02:19:28 4 of employees, considerably.

02:19:33 5 So I can't -- I can't tell you precisely how
02:19:38 6 big the employee base was at Intel at a particular time,
02:19:41 7 or over that time specifically.

02:19:48 8 MR. KIERNAN: Q. And with respect to
02:19:48 9 Intel, what is the basis for your opinion that an
02:19:53 10 impact to some employees could lead to an impact to
02:19:56 11 all or nearly all salaried employees of Intel?

02:20:01 12 A. There are a variety of reasons why the
02:20:10 13 restrictions on cold calling could impact -- could have
02:20:15 14 suppressive effects on wages of all or nearly all
02:20:21 15 employees.

02:20:22 16 Q. List them for me.

02:20:23 17 A. Among them are -- this is a hypothetical
02:20:33 18 example. I'm not sure if I have an example in here for
02:20:35 19 Intel. But an example might be that there is -- because
02:20:43 20 of equity concerns, if one person has pressure on her
02:20:48 21 wage it might lead to pressure on wages of the other
02:20:52 22 people in the work group.

02:20:53 23 So let's say a bunch of people are earning
02:20:57 24 \$100,000. If one person is offered a big outside offer,
02:21:03 25 and the employer matches it or at least increases their

02:21:07 1 wage, to the extent that she's in the same work group or
02:21:09 2 doing the same kinds of things, there might be pressure
02:21:11 3 to move it up. So there is one example.

02:21:14 4 Q. One example of what could happen in a
02:21:16 5 hypothetical world.

02:21:17 6 A. Absolutely. Yeah.

02:21:18 7 Q. Okay.

02:21:18 8 A. That's one example. And it happened in
02:21:20 9 these -- there is evidence of this in these firms.

02:21:24 10 Q. Okay. Stop right there.

02:21:25 11 A. Okay.

02:21:26 12 Q. For Intel, identify the example that you are
02:21:28 13 referring to.

02:21:29 14 A. Okay.

02:21:29 15 Q. Where the impact of compensation to one person
02:21:34 16 caused someone else's compensation to be raised.

02:21:40 17 A. I don't have here -- I don't know. I may have
02:21:42 18 in here of that. But I'm telling you why this is the
02:21:46 19 distinction I think you were making before. I'm asking
02:21:49 20 about could something be expected to happen and you are
02:21:52 21 asking me did it happen.

02:21:54 22 Q. What does that mean could it be expect -- I
02:21:57 23 notice in the body of your report you say nearly --
02:22:02 24 actually not nearly -- every time you write it could
02:22:06 25 happen. And then the summary opinions you say could be

02:22:10 1 expected to happen. What's the difference?

02:22:14 2 A. I think there -- I would have to look at
02:22:16 3 exactly the differences in the two passages, but these
02:22:19 4 are -- they're both talking about sort of making a
02:22:22 5 prediction about something versus what you were talking
02:22:24 6 about earlier, did something actually happen. And I
02:22:27 7 think that's a distinction we've been talking about in
02:22:29 8 many of your questions.

02:22:38 9 Q. Okay. So you are making a prediction of
02:22:40 10 whether or not it could happen?

02:22:43 11 A. I'm -- I was asked to determine whether
02:22:48 12 suppressing wages, including technical workers, were
02:22:55 13 basically predicted to lead to suppression of wages.

02:23:00 14 Q. Then in your report, you opine that it could
02:23:03 15 happen?

02:23:05 16 MS. DERMODY: Object to form.

02:23:07 17 THE WITNESS: No, I actually talk about it. I
02:23:09 18 use the same words, I think, where I say are predicted.
02:23:21 19 I'm looking on page 4, for example.

02:23:24 20 MR. KIERNAN: Q. Okay. And what do you
02:23:25 21 mean by that? They are predicted to happen -- I
02:23:30 22 mean, they are predicted to suppress the
02:23:32 23 compensation of all or nearly all members of
02:23:35 24 plaintiffs' proposed technical class?

02:23:40 25 A. I think this is what we talked about earlier.

02:23:42 1 That based on what I know about compensation, how I've
02:23:46 2 been thinking about this for the last, I don't know if
02:23:48 3 it's 22 or 24 years, that given the evidence that I have
02:23:55 4 here, having read these six feet, had access to read all
02:24:04 5 these depositions, what is -- what is the predicted
02:24:10 6 outcome.

02:24:12 7 You've talked about testing the outcome, but --
02:24:16 8 and talked about statistics and things, but that's not
02:24:18 9 what I was asked to do. I think that's an independent
02:24:21 10 question.

02:24:21 11 Q. Okay. So with respect to Intel, when you opine
02:24:30 12 that an impact to some employees, you are saying that
02:24:36 13 your opinion is that it's predicted that there would be
02:24:41 14 an impact to all or nearly all Intel employees?

02:24:45 15 A. Yeah. I -- I think -- what I'm saying is
02:24:51 16 agreements against cold calling can have -- are
02:24:58 17 predicted to have suppressive effects, or just -- I'm
02:25:01 18 using the words I'm using here so I'm not -- are
02:25:04 19 predicted to suppress the compensation.

02:25:06 20 Q. Well, you can change the words if they're not
02:25:08 21 accurate.

02:25:08 22 A. No, no, it's the same thing. I just wanted to
02:25:11 23 be clear.

02:25:12 24 Q. Predicted and could are the same thing in your
02:25:14 25 mind?

02:25:14 1 MS. DERMODY: Object to form.

02:25:15 2 THE WITNESS: No, I was using the word
02:25:17 3 suppress. I was worried about saying suppress.
02:25:18 4 Suppressive versus --

02:25:19 5 MR. KIERNAN: Q. In the sentence you said
02:25:21 6 could and then you switched to predicted. So
02:25:22 7 that's --

02:25:23 8 A. I'm just looking at this sentence now.

02:25:25 9 Q. Okay.

02:25:25 10 A. And say that the agreements against cold
02:25:27 11 calling are predicted to suppress the compensation of
02:25:31 12 all or nearly all members of the plaintiffs' proposed
02:25:35 13 technical class.

02:25:36 14 You were asking about a specific case. And
02:25:41 15 there are -- there are multiple reasons, given the way
02:25:45 16 these systems are set up, that one would -- there are
02:25:49 17 multiple reasons why one would predict the agreements
02:25:58 18 against cold calling would lead to suppression of wages.

02:26:02 19 Q. And they're all set forth in your report?

02:26:05 20 A. They are -- among them are the -- make sure
02:26:18 21 that they are all set forth in the report.

02:26:21 22 One has to do with this -- this internal equity
02:26:25 23 concerns within a group. One has to do with using
02:26:30 24 external market data. And if the external market data,
02:26:34 25 for example, this is another example, are suppressed,

02:26:40 1 bringing those back could lead to further supression.

02:26:44 2 Another example is the salary increases.

02:26:46 3 Salary increases we just talked about earlier. We
02:26:50 4 talked about a lot of things earlier, but that was one
02:26:57 5 we talked about earlier with respect to the person who
02:27:00 6 talked about the 4 percent managing to 3 percent.

02:27:03 7 Q. Let's start -- well, go back to Intel.

02:27:05 8 A. Okay.

02:27:06 9 Q. And let's take a -- do you know how many job
02:27:11 10 titles there were at Intel?

02:27:15 11 A. I can look to see. I don't know if I know how
02:27:20 12 many job titles are at Intel.

02:27:21 13 Q. Would it matter to your analysis of whether an
02:27:26 14 impact to compensation of some employees would impact --
02:27:29 15 could be predicted to impact the compensation of all or
02:27:33 16 nearly all employees?

02:27:44 17 A. Would knowing the number of job titles have an
02:27:48 18 impact on my --

02:27:50 19 Q. Your prediction.

02:27:50 20 A. -- on my prediction? No.

02:27:58 21 Q. It wouldn't?

02:28:00 22 MS. DERMODY: Object to form.

02:28:03 23 Are you arguing with him?

02:28:04 24 MR. KIERNAN: I'm not. I want to make sure I
02:28:06 25 understand his answer.

02:28:08 1 MS. DERMODY: You said, "It wouldn't?" That's
02:28:09 2 not really asking to understand, Mr. Kiernan.

02:28:13 3 MR. KIERNAN: It's beyond objection to form.
02:28:14 4 Stop coaching the witness. Stop coaching the witness.

02:28:17 5 THE WITNESS: What is the question?

02:28:18 6 MR. KIERNAN: You guys wanted that rule.

02:28:21 7 Q. My question is, it would not impact your
02:28:25 8 prediction, the number of job titles, at Intel?

02:28:31 9 MS. DERMODY: Object to form.

02:28:35 10 THE WITNESS: My prediction is that the
02:28:41 11 arrangements in this case, the anti no-cold-calling
02:28:47 12 agreements, are predicted to have suppressive effects.
02:28:54 13 And whether -- I'm making a prediction about there are
02:29:01 14 suppressive effects. I am not making a prediction
02:29:04 15 about -- yeah.

02:29:07 16 So I'm just making a prediction about
02:29:09 17 suppressive effects. So whether they're X or two times
02:29:12 18 X wouldn't change whether I predict that that would have
02:29:16 19 suppressive effect.

02:29:16 20 MR. KIERNAN: Q. But you're predicting two
02:29:19 21 effects, right? You are predicting that the
02:29:21 22 agreements would impact the people who didn't
02:29:24 23 receive a cold call because of the agreements, and
02:29:27 24 you are also predicting that it would impact all or
02:29:31 25 nearly all employees at Intel. Is that accurate?

02:29:37 1 MS. DERMODY: Object to form.

02:29:39 2 THE WITNESS: I'm sorry. I think that all or
02:29:40 3 nearly all would subsume the people that were impacted
02:29:48 4 directly.

02:29:48 5 MR. KIERNAN: Q. So the answer is yes?

02:29:50 6 A. A lot went on right there, so tell me the
02:29:52 7 question again.

02:29:58 8 Q. The number of job titles at Intel --

02:30:00 9 A. Right.

02:30:04 10 Q. -- would not impact your opinion or analysis
02:30:07 11 with respect to predicting whether an impact of the
02:30:14 12 compensation of some employees at Intel would lead to
02:30:16 13 the impact of all or nearly all employees at Intel.

02:30:20 14 MS. DERMODY: Object to form.

02:30:21 15 MR. KIERNAN: Q. Is that accurate?

02:30:28 16 MS. DERMODY: Object to form.

02:30:32 17 THE WITNESS: I made the prediction that given
02:30:36 18 the no-cold-calling agreements led to -- are predicted
02:30:40 19 to have suppressive effects on wages for all or nearly
02:30:44 20 all of the technical class. And I didn't know -- I told
02:30:48 21 you, I don't know the precise number of job titles.

02:30:50 22 MR. KIERNAN: Q. Right. But -- I
02:30:51 23 understand that. What I'm asking you is, would it
02:30:54 24 impact your analysis if it were five job titles or a
02:30:58 25 thousand job titles with a number?

02:31:00 1 MS. DERMODY: Excuse me. This is the last time
02:31:01 2 I'll let you ask this question.
02:31:04 3 MR. KIERNAN: He won't answer the question.
02:31:05 4 MS. DERMODY: He's answered it four times.
02:31:06 5 This is the last time you're asking it.
02:31:09 6 MR. KIERNAN: Q. Can you answer the
02:31:09 7 question?
02:31:10 8 MS. DERMODY: Object to form.
02:31:20 9 THE WITNESS: I'll try again. I -- among the
02:31:23 10 findings in my report are that the no-cold-calling
02:31:34 11 agreements could be expected to lead to suppression of
02:31:44 12 wages. And again, as I said, I didn't know the specific
02:31:50 13 number of job titles.
02:31:58 14 MR. KIERNAN: How much time do we have?
02:32:00 15 THE VIDEOGRAPHER: Under two minutes.
02:32:01 16 MR. KIERNAN: Q. Okay. If an employee at
02:32:03 17 Intel -- strike that.
02:32:09 18 So you would also predict that impact of
02:32:14 19 compensation to some employees, for whatever reason,
02:32:18 20 whether because of the agreements or for some other
02:32:20 21 reason, would lead to an impact to all or nearly all
02:32:25 22 Intel employees; is that correct?
02:32:27 23 MS. DERMODY: Object to form.
02:32:28 24 THE WITNESS: That's a much different -- I
02:32:29 25 don't understand -- I think that's a much different

02:32:31 1 question. I think a much different issue than you said
02:32:34 2 before, if I heard it right. Could you repeat that.
02:32:36 3 MR. KIERNAN: Q. Okay. Let's say a group
02:32:42 4 of employees got a raise at Intel because of cold
02:32:47 5 calls they received from non-defendant companies.
02:32:50 6 Okay? You follow me so far?
02:32:52 7 A. Yeah.
02:32:53 8 Q. All right --
02:32:55 9 A. Sorry. A group of employees --
02:32:57 10 Q. At Intel.
02:32:57 11 A. -- got raises --
02:32:59 12 Q. Got raises.
02:32:59 13 A. -- because of cold call --
02:33:01 14 Q. Cold calls they had received from non-defendant
02:33:04 15 companies.
02:33:06 16 A. So non-defendant companies called Intel
02:33:09 17 employees with an offer.
02:33:12 18 Q. Uh-huh.
02:33:13 19 A. And Intel employees went to their whoever and
02:33:15 20 got a raise.
02:33:16 21 Q. Right.
02:33:17 22 A. Okay.
02:33:18 23 Q. It's your prediction that those raises would
02:33:24 24 lead to higher compensation for all or nearly all
02:33:27 25 salaried employees at Intel?

02:33:32 1 A. I didn't -- that wasn't part of my -- I didn't
02:33:37 2 investigate that. I didn't think about that prior to
02:33:40 3 actually just now.

02:33:42 4 Q. Why would the prediction be different?

02:33:45 5 MS. DERMODY: Object to form.

02:33:51 6 THE WITNESS: Why would the prediction be
02:34:00 7 different? I have to think about this, because remember
02:34:05 8 I think there are multiple reasons why these -- where --
02:34:10 9 why I came to this conclusion that these -- these
02:34:13 10 collusive agreements or these anti no-cold-call
02:34:18 11 agreements led to these --

02:34:22 12 THE VIDEOGRAPHER: Got to change.

02:34:23 13 MR. KIERNAN: He's done.

02:34:24 14 THE VIDEOGRAPHER: We're going off the record
02:34:25 15 at 2:34 p.m.

02:34:26 16 This will mark the end of tape No. 2.

02:34:30 17 (Recess taken.)

02:51:25 18 THE VIDEOGRAPHER: We're back on the record at
02:51:27 19 2:51 p.m.

02:51:27 20 This marks the start of tape No. 3.

02:51:51 21 MR. KIERNAN: Q. In reaching your opinion
02:51:54 22 that suppression of compensation of some
02:51:58 23 individuals -- some employees predicted to lead to
02:52:04 24 supression of compensation of all or nearly all the
02:52:13 25 technical class, what was the methodology you used

02:52:20 1 in reaching that opinion?

02:52:25 2 A. I -- I don't think that's directly the
02:52:29 3 conclusion. You said -- you said that -- I want to make
02:52:36 4 sure that it was right. I think you said something
02:52:39 5 that's a little different. It sounded --

02:52:41 6 Q. Okay. Please --

02:52:43 7 A. I was just going to repeat what I've been
02:52:45 8 saying. I think what you are asking is what was the
02:52:48 9 method I used to reach my conclusions. So I'll -- I'd
02:52:50 10 rather -- so I'll talk about that.

02:52:53 11 I -- again, I think you asked me this question
02:52:56 12 earlier this morning when we started actually in the
02:52:59 13 first segment. I read volumes and volumes of
02:53:07 14 depositions, PowerPoints, emails, exhibits, I think
02:53:12 15 there were more than 2,000 exhibits. I thought about
02:53:17 16 how compensations are set up, how I teach about how
02:53:20 17 compensations are set up, and I thought about the way
02:53:26 18 companies that have formalized systems operate. And I
02:53:30 19 then sort of went through this -- this process. There
02:53:35 20 is an outline in my report.

02:53:39 21 Q. And are you aware of generally accepted
02:53:42 22 procedures that are used to address the question of
02:53:48 23 whether impact on compensation of some employees be
02:53:54 24 predicted to lead to impact of all or nearly all other
02:53:59 25 employees within a company?

03:09:12 1 employee decision. I am -- I'm talking about a
03:09:16 2 prediction.

03:09:29 3 Q. So define for me what you mean by "prediction."
03:09:34 4 In other words, don't assume I know what you mean,
03:09:36 5 because I don't.

03:09:41 6 Is that different from could?

03:09:51 7 A. I think "could" and "predicted" are very
03:09:54 8 similar words. But, you know, I predict this has
03:10:00 9 happened, given what I know about the structures, about
03:10:03 10 how compensation systems work, I believe that these
03:10:07 11 agreements are predicted to suppress compensation.

03:10:21 12 MS. DERMODY: You can keep going.

03:10:22 13 THE WITNESS: Maybe -- I don't know if this is
03:10:24 14 helping what you are asking, is I think I'm trying to
03:10:26 15 make a difference -- a distinction by using the word
03:10:29 16 prediction. You asked me to define or talk about
03:10:36 17 prediction. I don't have the outcome. I haven't seen
03:10:38 18 what happened. So that's what you were asking me about
03:10:40 19 before, I think, making the point. But that's
03:10:42 20 consistent with this, that I --

03:10:44 21 MR. KIERNAN: Q. I see. So you are not
03:10:46 22 saying that it would necessarily lead to the
03:10:47 23 suppression of compensation of all or nearly all
03:10:53 24 members of plaintiffs' proposed technical class?

03:10:56 25 A. I don't want to use a double negative. That's

03:10:57 1 not --

03:10:57 2 MS. DERMODY: Excuse me. Object to form.

03:10:59 3 THE WITNESS: That's not not what I was saying,

03:11:01 4 I think. I want to be clear. What I'm saying is I'm

03:11:09 5 making a prediction, and I didn't measure these things.

03:11:14 6 As I say, in fact, I say it's consistent with your

03:11:16 7 question did you have the data. I say in the same

03:11:19 8 paragraph, I think, in fact, I've not been asked to

03:11:23 9 estimate the magnitude of damages. That I predict that

03:11:27 10 the agreements against cold calling -- I believe the

03:11:31 11 agreements are predicted to suppress compensation.

03:11:36 12 So the difference between prediction and

03:11:39 13 knowing is measuring. And I wasn't asked to estimate

03:11:43 14 those things. I didn't have the -- as you said, I

03:11:46 15 didn't have information on individual pay decisions or

03:11:50 16 compensation levels for all the members of the

03:11:53 17 companies.

03:12:10 18 MR. KIERNAN: Q. So with respect to your

03:12:12 19 prediction, what level of confidence? Is it 2

03:12:19 20 percent confidence? 50 percent?

03:12:28 21 A. I'm not really sure what you mean. So this is

03:12:33 22 a prediction. I'm making a prediction. I'm not putting

03:12:37 23 precision around an estimate after I've made an

03:12:40 24 estimate, which I think you were asking about earlier, a

03:12:42 25 standard error. This is my prediction. Sort of based

03:12:44 1 on my knowledge of these systems and these structures, I
03:12:47 2 predict this.

03:13:37 3 Q. Let me hand you what's been previously marked
03:13:41 4 Horner 1250. Actually, let's go ahead and mark this
03:13:44 5 Defendants' 2, please. That's easier.

03:13:57 6 (Whereupon, Exhibit 2 was marked for
03:13:57 7 identification.)

03:14:25 8 MR. KIERNAN: Q. I'll give you a chance to
03:14:26 9 review it. Do you recognize this document?

03:14:35 10 A. I believe I've seen at least part of this,
03:14:38 11 but --

03:14:39 12 Q. If you go to paragraph 113.

03:14:41 13 A. I was going to say, I'd like to look to see
03:14:43 14 where I referenced it. Is this Adobe?

03:15:06 15 Yes. I'm referencing this on page 34 of my
03:15:10 16 report. Looks like, to me.

03:15:20 17 Q. I notice here you cite to the deposition of
03:15:23 18 Digby Horner that references [REDACTED]. And this, I'll
03:15:27 19 represent to you, is the exhibit that he was being
03:15:29 20 questioned about.

03:15:31 21 Did you review this exhibit when you were
03:15:34 22 writing this paragraph?

03:15:37 23 A. Yeah.

03:15:39 24 Q. Okay.

03:15:40 25 A. Well, in the sense that I may have actually

03:15:43 1 written down this quote, and then typed the quote in. I
03:15:48 2 might not have been reviewing it at that point.

03:15:51 3 Q. Sure. Fair enough.

03:15:52 4 A. For some of these I wrote them directly from --
03:15:57 5 from the exhibits, and from some I was writing from
03:15:59 6 notes. But the note process was taking too long and I
03:16:03 7 switched.

03:16:05 8 Q. Okay. So [REDACTED] works at Adobe; is that your
03:16:10 9 understanding?

03:16:11 10 A. I'd have to look back at it again.

03:16:35 11 It looks like it, because this looks to be --
03:16:38 12 I'm assuming this is emails among employees from Adobe
03:16:42 13 talking about [REDACTED]. And it says a no-brainer to
03:16:46 14 retain [REDACTED], so I'm assuming that he was there at the
03:16:48 15 time. But I'm not -- you know, that looks like it from
03:16:51 16 what I've read, based on that. Okay.

03:16:54 17 Q. Right. And according to this email, [REDACTED]
03:17:01 18 got a raise after they learned that he'd interviewed
03:17:07 19 with four companies, and he also noted that his college
03:17:11 20 friends were making \$15,000 more per year than he is.
03:17:15 21 Is that your understanding?

03:17:25 22 A. I'm not sure -- I don't know about the college
03:17:27 23 friends.

03:17:28 24 Q. If you go to page 2.

03:17:29 25 A. Okay. Okay. He has college friends that work

03:23:51 1 these individuals, I don't know their performance. This
03:23:52 2 is one measure they're using of performance here.

03:23:59 3 Principles, among the issues of equity and
03:24:01 4 internal equity, would suggest that people who are doing
03:24:04 5 a job similar to his would be those who could be
03:24:17 6 impacted by this. But so could others as well.

03:24:19 7 MR. KIERNAN: Q. Well, let's start here.
03:24:21 8 Applying your notion of internal equity, who would
03:24:27 9 you predict in the [REDACTED], the same as
03:24:32 10 [REDACTED], whose pay would be impacted?

03:24:36 11 MS. DERMODY: Object to form.

03:24:38 12 THE WITNESS: I don't know the specifics of
03:24:38 13 what the [REDACTED] is. And it could be quite a wide
03:24:44 14 classification, and there could be some people who are
03:24:46 15 impacted that I would think would be doing just his job,
03:24:50 16 coworker, working side by side. I don't know that.

03:24:53 17 And I think that this kind of thing, as I said
03:24:56 18 earlier, is among the reasons why, given what I know and
03:25:01 19 the structures, what I know about this. This particular
03:25:04 20 example of one person being called, and that impacted
03:25:08 21 people around them, is one reason why I come to those
03:25:12 22 conclusions, but there are others. So this isn't the
03:25:15 23 only reason why you would have them. In fact, all of
03:25:18 24 these employees could be impacted if there is
03:25:24 25 suppression of wages at defendant firms. One example --

03:25:31 1 MR. KIERNAN: Q. Now you are using could.

03:25:32 2 I understand anything could happen.

03:25:34 3 A. Okay.

03:25:37 4 Q. I could get hit right now by a meteor. What I
03:25:40 5 want to focus on is what you are predicting. Your
03:25:44 6 opinion is because of a formalized pay system at Adobe,
03:25:48 7 that an impact on compensation of some employees is
03:25:52 8 predicted to lead to an impact on compensation of all or
03:25:56 9 nearly all technical class employees.

03:26:00 10 So looking at [REDACTED], using the same job
03:26:04 11 title of all these other people, what's your prediction?

03:26:10 12 MS. DERMODY: Object to form.

03:26:12 13 THE WITNESS: I'd want to think about that more
03:26:14 14 carefully and know more about these individuals. I
03:26:17 15 think, again, this example is a subset. In fact, I
03:26:20 16 called out this example because it -- it discusses
03:26:24 17 principles of internal equity. I think that's why I was
03:26:29 18 doing it in this section. Yeah.

03:26:32 19 And individual instances of this, again, I
03:26:34 20 haven't looked at the individual instances. But if
03:26:37 21 there are -- if there is wage suppression in the market
03:26:40 22 data that can have translative effects -- if that's a
03:26:46 23 word, I'm sorry -- if that can translate into
03:26:49 24 suppression throughout the system.

03:26:54 25 MR. KIERNAN: Q. What do you understand

03:26:55 1 would be the but-for world?

03:26:58 2 MS. DERMODY: Object to form.

03:26:59 3 THE WITNESS: I'm not sure what you mean by the
03:27:01 4 but-for world.

03:27:02 5 MR. KIERNAN: Q. Not familiar with that
03:27:03 6 term?

03:27:04 7 A. I am, sort of. I think you mean the
03:27:06 8 counterfactual. Is that what you mean?

03:27:09 9 Q. Yeah. So with Adobe, in the but-for -- who did
03:27:13 10 Adobe have an alleged agreement with?

03:27:15 11 MS. DERMODY: Object to form.

03:27:18 12 THE WITNESS: I think what you mean is the
03:27:20 13 but-for world is in the world where there are no
03:27:23 14 agreements.

03:27:23 15 MR. KIERNAN: Q. Right. Although my last
03:27:26 16 question is who -- which company did plaintiffs
03:27:32 17 allege Adobe had an agreement that restricted cold
03:27:37 18 calling?

03:27:37 19 A. I can't remember the details of who Adobe had
03:27:40 20 an agreement with.

03:27:42 21 Q. Okay. Does it matter to your analysis?

03:27:44 22 A. That doesn't matter to the -- to the
03:27:47 23 conclusion.

03:27:49 24 Q. Does it matter how many cold calls Adobe would
03:27:55 25 have received from that company in the but-for world?

03:30:46 1 the cold calling. And so stopping cold calling -- as I
03:30:51 2 said before, stopping cold calling -- the agreements
03:30:57 3 against cold calling, stopping cold calling, are
03:30:59 4 predicted to suppress the compensation. But remember
03:31:04 5 it's a prediction and not a measurement.

03:31:08 6 So that frequency, if it was X or 2X, I still
03:31:15 7 would make the same prediction if it were, say, X or 2X.
03:31:19 8 I think that's what you were asking. If it was a lot or
03:31:22 9 a super lot, X or 2X, I still have the same prediction.

03:31:28 10 Q. Okay. In a world in which the agreement wasn't
03:31:31 11 in place.

03:31:34 12 A. Okay.

03:31:34 13 Q. So there is no --

03:31:37 14 A. Agreements.

03:31:37 15 Q. -- agreement between Adobe and Apple.

03:31:41 16 A. Right.

03:31:41 17 Q. So an Adobe employee, in that but-for world,
03:31:43 18 gets a cold call from Apple --

03:31:50 19 A. Yes.

03:31:51 20 Q. -- negotiates higher pay --

03:31:52 21 A. With?

03:31:53 22 Q. -- with Adobe.

03:31:54 23 A. So Apple calls into Adobe, the Adobe employee
03:31:58 24 uses that information to negotiate a higher wage
03:32:02 25 internal to Adobe.

03:32:04 1 Q. (Nonverbal response.)

03:32:04 2 A. Okay.

03:32:05 3 Q. And you understand that's the but-for world
03:32:07 4 that plaintiffs are alleging?

03:32:13 5 MS. DERMODY: Object to form.

03:32:20 6 THE WITNESS: Again, I'm not sure what you mean
03:32:22 7 by the plaintiffs are alleging. I'm responding to these
03:32:26 8 questions, so I don't know about -- there is many
03:32:28 9 aspects of this case that I'm not party to.

03:32:31 10 MR. KIERNAN: Q. Okay.

03:32:32 11 A. So I don't want to comment on something that --

03:32:34 12 Q. Fair enough. So let's focus on the but-for
03:32:36 13 world as I just defined it. There is no agreement
03:32:40 14 between Adobe and Apple. Adobe employee gets a raise
03:32:43 15 after a cold call from Apple.

03:32:45 16 A. Okay. I thought you were talking about this.

03:32:48 17 Q. Follow me?

03:32:49 18 A. An Adobe employee gets a raise after a cold
03:32:52 19 call from Apple. Comes in, negotiates a higher wage.
03:32:55 20 Yes.

03:32:56 21 Q. Right. Would you predict that that raise would
03:33:03 22 then lead to a raise to all or nearly all technical
03:33:09 23 employees?

03:33:12 24 A. I wouldn't necessarily predict that that alone
03:33:16 25 would do that. That's why I said that that kind of

03:33:19 1 thing is among the reasons why I make this prediction.

03:33:24 2 So that alone might not do that. So no.

03:33:32 3 Q. Okay. What other conditions would you need to
03:33:37 4 be able to predict that that cold call led to increases
03:33:45 5 in compensation for all or nearly all technical class
03:33:48 6 members?

03:33:49 7 A. You know, I'm not saying that that cold call or
03:33:52 8 any cold call would lead to -- you know, that specific
03:33:57 9 cold call would cycle through. It's -- I'm making a
03:34:02 10 prediction here -- again, I keep going back to this, but
03:34:05 11 that's what we're talking about -- based on the
03:34:08 12 knowledge of these compensation systems, the reason that
03:34:12 13 they're formalized compensation systems, and that there
03:34:14 14 are a variety of reasons that lead me to think that the
03:34:18 15 agreements against cold calling are predicted to
03:34:22 16 suppress compensation.

03:34:23 17 As we said earlier in the day, one of those
03:34:27 18 is --

03:34:27 19 MS. DERMODY: Sorry, Kevin, you are covering
03:34:29 20 your microphone.

03:34:30 21 THE WITNESS: I'm sorry. As I said earlier in
03:34:32 22 the day, one of those is an example like this specific
03:34:35 23 case, but there are others.

03:34:43 24 MR. KIERNAN: Q. I didn't understand your
03:34:44 25 last sentence, "As I said earlier in the day, one of

03:34:47 1 those is an example like this specific case, but
03:34:51 2 there are others."

03:34:52 3 A. Yes.

03:34:53 4 Q. What does that mean?

03:34:54 5 A. I said earlier in the day that there are a
03:34:56 6 variety of reasons that led me to -- a variety of things
03:35:01 7 that led me to this conclusion. And one of them that we
03:35:04 8 talked about was one way that restricting cold calling
03:35:11 9 could have an impact on someone other than the person
03:35:14 10 who would be cold called, is by the kind of scenario
03:35:22 11 we're talking about here; someone, and then coworkers,
03:35:25 12 maybe the people they work on the same team or they're
03:35:28 13 doing precisely the same thing. But there are others.

03:35:32 14 And that's why I was saying you are focusing on
03:35:34 15 this one, but there are other reasons as well, that
03:35:38 16 that's an example. It's actually the most concrete,
03:35:40 17 specific example, and it highlights something called
03:35:43 18 internal equity.

03:35:44 19 Q. Okay. And that's what I want you -- let's go
03:35:47 20 back to the exhibit.

03:35:48 21 A. Okay.

03:35:49 22 Q. And show -- and explain to me how that would
03:35:51 23 work with [REDACTED]. So [REDACTED] gets a \$20,000 increase
03:35:59 24 in pay.

03:36:00 25 A. Again, I think I'll give an example. Again, I

03:36:04 1 don't know these specific workers, what they're doing.
03:36:08 2 Imagine a worker, two people are working side by side --
03:36:11 3 five people are working side by side, they're all doing
03:36:14 4 roughly the same work, they're all paid roughly the same
03:36:17 5 way. One of them gets a cold call, that person's wage
03:36:23 6 increases. There is -- principles of internal equity
03:36:27 7 would suggest that there is upward pressure on the
03:36:30 8 others.

03:36:30 9 Q. I know. But you are talking about a
03:36:32 10 hypothetical. I'm talking about real life.

03:36:34 11 MS. DERMODY: Object to form.

03:36:36 12 MR. KIERNAN: Q. So let's focus on the
03:36:37 13 real life example. [REDACTED], he interviewed with
03:36:42 14 four firms, he's gone back to his manager with
03:36:44 15 information about his college buddies, and he's
03:36:48 16 negotiated a 20,000 increase in pay to his salary.

03:36:54 17 A. Right.

03:36:54 18 Q. How could that lead to an impact to even
03:36:59 19 people -- just the people in his own job title?

03:37:02 20 MS. DERMODY: Just one moment. So this is the
03:37:04 21 fifth time you've asked the same question, and we're
03:37:06 22 going to need to move on after this.

03:37:10 23 THE WITNESS: I think that, again, I don't know
03:37:12 24 those specific people.

03:37:14 25 MR. KIERNAN: Q. You would need to know

03:37:14 1 that?

03:37:17 2 A. No. I wouldn't have to know the people. But I
03:37:19 3 do --

03:37:20 4 Q. What would you need to know to make the
03:37:22 5 prediction that the other people within the same job
03:37:25 6 title --

03:37:26 7 A. An example.

03:37:26 8 Q. -- hang on -- would impact their compensation?
03:37:29 9 What are the things you would need to know to make that
03:37:31 10 prediction?

03:37:54 11 A. I would want to know what kind of work they're
03:37:56 12 doing. How they're doing, among other things. I
03:38:02 13 haven't thought about that. The reason you -- the
03:38:04 14 reason I'm reluctant to talk about a specific example is
03:38:07 15 I think that the fact that it's not -- this specific
03:38:12 16 example, I don't know that worker group, I don't know
03:38:14 17 that particular -- you know, I knew this is an example
03:38:19 18 of internal equity, that's why I talked about it.

03:38:21 19 But it's -- really what happens in that
03:38:24 20 particular work group is not -- what happens there -- my
03:38:33 21 results are not dependent on what happened in that work
03:38:37 22 group because there are other avenues for my predictions
03:38:43 23 or my -- my conclusions in my report.

03:38:48 24 Q. And what are those other conditions that would
03:38:52 25 lead you to the prediction about [REDACTED] impact on

03:38:55 1 anybody else?

03:38:58 2 A. I -- the report doesn't talk about that. What
03:39:00 3 the report talks about is there are suppressive -- that
03:39:07 4 the no-cold-calling agreements -- restrictions on
03:39:10 5 cold-calling agreements could be -- sorry. Wrong page.

03:39:15 6 That the restrictions against cold calling,
03:39:18 7 such as those at issue in the case, are predicted to
03:39:23 8 suppress compensation. And the reason I say that there
03:39:26 9 are multiple things here is that even independent of the
03:39:31 10 example, or an example like you talked about, there are
03:39:34 11 other reasons, including those I -- including some I've
03:39:39 12 mentioned earlier for that conclusion.

03:39:47 13 Q. Can you point to any examples of that happening
03:39:53 14 where an impact to compensation of all or nearly all of
03:39:57 15 the technical class members occurred because of changes
03:40:01 16 to some employees' compensation?

03:40:04 17 A. I didn't -- again, as you -- as you said this
03:40:09 18 morning, I didn't -- I don't have the decisions on the
03:40:12 19 individual managers or the data on what their
03:40:15 20 compensation -- individual compensation level was, so I
03:40:17 21 can't point to -- I'm talking about this idea based on
03:40:22 22 the knowledge of the compensation systems, not on the
03:40:25 23 outcome, not on estimating -- making an estimate of the
03:40:30 24 magnitude of the damages.

03:40:34 25 Q. Well, I'm not talking about the estimation of

03:49:32 1 Q. I'd like to. You know why? Because here we
03:49:36 2 have people's salaries, and we have the performance
03:49:40 3 levels, we have the job codes, we have all the things
03:49:43 4 that you talk about that make a formalized pay system.
03:49:46 5 So I think -- I'd like you to take me through with this
03:49:49 6 specific example.

03:49:51 7 A. Again, I'm nervous about this specific example
03:49:54 8 because I don't know these folks. So I don't want to be
03:49:56 9 talking about a specific example, but I will do my best
03:49:58 10 to answer your question.

03:49:59 11 Q. Would that matter, though? Is that why you
03:50:01 12 keep clarifying that?

03:50:03 13 A. I was afraid what you were asking that I was --
03:50:06 14 I was being asked about a specific work group. So I
03:50:09 15 wanted to -- I didn't know if you had something in mind
03:50:12 16 with a specific group of workers. I just wanted to be
03:50:15 17 clear.

03:50:16 18 So let me talk about -- you asked about other
03:50:21 19 reasons why it might come to these conclusions. One is
03:50:24 20 the immediate, there -- if person X doesn't get the job
03:50:32 21 offer, there is less upward pressure on the wages of the
03:50:35 22 work crew, if they're doing similar work. Because
03:50:38 23 people -- there is this idea of internal equity. We
03:50:41 24 want to -- excuse me -- workers doing a similar work
03:50:47 25 similarly. Another is --

03:50:49 1 Q. So let's stop there and look at the example in
03:50:52 2 front of you.

03:50:53 3 A. Okay.

03:50:53 4 Q. So [REDACTED] --

03:50:55 5 MS. DERMODY: Just note you cut him off from
03:50:56 6 answering, so you might have a challenge getting the
03:50:59 7 whole answer out if you do that.

03:51:01 8 MR. KIERNAN: Okay.

03:51:02 9 Q. So [REDACTED] doesn't get the \$20,000 bump. And
03:51:09 10 you're predicting -- you would predict that these other
03:51:12 11 employees here now wouldn't get some bump because
03:51:17 12 Mr. Gray didn't get the bump. Is that what you are
03:51:19 13 saying?

03:51:20 14 A. In example of internal equity concerns is
03:51:23 15 that -- related to internal equity concerns is the idea
03:51:27 16 that people doing similar work would be paid similarly.

03:51:31 17 Q. So let's look here.

03:51:32 18 A. Well, again, I don't know if they're doing
03:51:34 19 similar work, but let's assume that they are. So that
03:51:37 20 if one didn't get a raise, there would be less upward
03:51:40 21 pressure on others in the work group than if the person
03:51:43 22 did get a raise. I think that's what you've been asking
03:51:46 23 me.

03:51:47 24 I think you were making that as a general
03:51:50 25 argument that that alone led to paragraph h. And I'm

03:51:52 1 saying there are other reasons -- I really thought that
03:51:56 2 that's what you were driving toward. That a cold call
03:51:59 3 into a particular person would necessarily lead to the
03:52:02 4 conclusion. And that's not the only reason that would
03:52:05 5 lead to the conclusion, and that was why I said there
03:52:08 6 are these other features that I wanted to talk about.

03:52:10 7 Q. Right. And that's what I want you to talk
03:52:12 8 about.

03:52:12 9 A. Okay.

03:52:13 10 Q. Okay.

03:52:13 11 A. But then I thought you stopped me to go here
03:52:16 12 again. So let me give you one other example.

03:52:19 13 One would be imagine the salary surveys which
03:52:29 14 we didn't really talk about. There are two types of
03:52:31 15 data you could get from the external market. One is
03:52:33 16 salary survey data. So what are you paying workers in
03:52:37 17 the market. I go through a more complicated example in
03:52:40 18 figures 2, 3, 4, 5 and 6. It's a little bit more of
03:52:45 19 the -- but, you know, it doesn't have to be that way
03:52:48 20 necessarily as an example where external market data are
03:52:52 21 brought into the internal market.

03:52:54 22 And if there is suppression of wages in the
03:52:58 23 external market, or anywhere, then those wages that a
03:53:05 24 company looks at to see what competitors are paying are
03:53:13 25 necessarily lower. So there is another avenue.

03:53:17 1 (Reporter clarification.)

03:53:19 2 THE WITNESS: Are necessarily lower. I'm
03:53:19 3 sorry.

03:53:19 4 Another avenue has to do with salary
03:53:23 5 increase -- or budget increases, which is the example I
03:53:27 6 talked about earlier. And I don't know if we ever found
03:53:32 7 it. I think it was 160-something, someone said that we
03:53:38 8 looked at. Maybe you directed me to it. And this is
03:53:41 9 the second one. No, that's not it. I don't know where
03:53:44 10 it is.

03:53:45 11 Where if it were the case that there is a
03:53:48 12 massive -- doesn't have to be massive. Any -- if it's
03:53:52 13 the case that because there is less competition for
03:53:59 14 wages, that the raises the people are expecting next
03:54:02 15 year are lower than the raises if -- to the extent that
03:54:06 16 firms are using external market data on what raises will
03:54:10 17 be, if raises are lower because there is less
03:54:13 18 competition in the market, then that's another
03:54:18 19 propagating effect.

03:54:20 20 So there are multiple reasons that we've talked
03:54:22 21 about. Including those related to internal equity,
03:54:25 22 including multiple uses of external market data.

03:54:29 23 So again, based on that knowledge of this,
03:54:32 24 using external market data, all defendants use external
03:54:35 25 market data, I come to the conclusion that we talked

03:54:39 1 about. The agreements against cold calling are
03:54:41 2 predicted to suppress compensation.

03:54:57 3 MS. DERMODY: If you're at a convenient break
03:54:59 4 point, David, we've been going over an hour.

03:55:02 5 MR. KIERNAN: This is fine. This is fine.

03:55:09 6 THE VIDEOGRAPHER: We're going off the record
03:55:11 7 at 3:55 p.m.

03:55:13 8 (Recess taken.)

04:17:47 9 THE VIDEOGRAPHER: We're back on the record at
04:17:50 10 4:17 p.m.

04:18:12 11 MR. KIERNAN: Q. Okay. Can you turn to
04:18:14 12 paragraph 194 of your report. That's on page 58.
04:18:33 13 Okay.

04:18:34 14 You state here, "In the instance of this case,
04:18:36 15 the defendant firms limited the market for the employees
04:18:39 16 by restricting cold calling. This clearly led to what
04:18:43 17 would otherwise be higher levels of compensation for
04:18:45 18 some of those in the firms, except that the restrictions
04:18:49 19 were in place."

04:18:52 20 Do you see that?

04:18:55 21 A. I do. On page 58, yeah.

04:18:58 22 Q. What's the basis for your statement that the
04:19:02 23 agreements being challenged by the plaintiffs clearly
04:19:06 24 led to what otherwise would be higher levels of
04:19:10 25 compensation for some of those in the firms except that

04:27:36 1 MR. KIERNAN: Q. Well, the IT support
04:27:37 2 specialist is within the technical class, so --

04:27:40 3 A. I thought when you said that it's more likely
04:27:42 4 among the IT support specialists than other occupations,
04:27:46 5 there are other occupations in the technical class
04:27:49 6 independent of the IT support specialists. So I was
04:27:51 7 just trying to answer that specific question.

04:27:53 8 Q. Okay. Why is -- why do you find it more likely
04:27:58 9 that the impact of the agreements, or that there were --
04:28:02 10 is more likely an impact of the agreements on the IT
04:28:05 11 support specialist than on a job title that does not
04:28:08 12 fall within the technical class?

04:28:12 13 A. Again, I didn't specifically talk about the IT
04:28:15 14 support specialist, but I do recognize that -- or I'm
04:28:19 15 assuming, from what you are saying, you know, I don't
04:28:22 16 know that specific one or how many people are in it.
04:28:26 17 But I believe that this situation of lower levels of
04:28:30 18 compensation for some can directly lead to lowers to
04:28:33 19 others is more likely among the technical class because
04:28:36 20 of the way that -- these are distinct sets of
04:28:42 21 occupations and job families.

04:28:44 22 And ones in which I think that these -- you
04:28:47 23 know, based on what I know and how these work and how
04:28:51 24 organizations think about -- they don't even have to
04:28:53 25 call them job families, but thinks about different kinds

04:28:56 1 of jobs differently, that there was more attention on
04:29:02 2 the technical class.

04:29:05 3 Q. As a whole?

04:29:07 4 A. Relative to the all salary class, which is what
04:29:10 5 I'm talking about here.

04:29:11 6 Q. And did you examine job title by job title of
04:29:14 7 the technical class?

04:29:16 8 A. No. No.

04:29:34 9 Q. So let's start with the IT support specialist
04:29:40 10 at Intel. And I'll represent to you that there are 413
04:29:44 11 of them in the technical class.

04:29:47 12 A. IT support specialists are -- so again, I'm not
04:29:53 13 familiar with that specific -- that number. So what you
04:29:56 14 are saying is that that occupation is in the technical
04:30:03 15 class as is described here in paragraph 195?

04:30:13 16 Q. Correct.

04:30:13 17 A. IT support specialist.

04:30:15 18 Q. And in the technical class, there are 35,000
04:30:18 19 employees just from Intel. Okay?

04:30:22 20 A. Okay.

04:30:26 21 Q. All right.

04:30:27 22 A. 35,000?

04:30:27 23 Q. 35,000.

04:30:28 24 A. That must vary over time a bit.

04:30:31 25 Q. So explain how lack of a cold call to an IT

04:30:37 1 support specialist would lead to suppression of
04:30:50 2 compensation of all or nearly all the technical class
04:30:53 3 members across job titles within the technical class.

04:30:58 4 A. It doesn't have to. So that's what we talked
04:31:00 5 about before. That there could be -- there are various
04:31:04 6 avenues by which -- by which the anti no-cold-call --
04:31:11 7 the anti -- I don't want to use a double negative.
04:31:15 8 There are various avenues by which the no-cold-call
04:31:18 9 agreements can lead to -- or the agreements against cold
04:31:23 10 calling can lead to suppression of compensation, and
04:31:28 11 they don't have to.

04:31:30 12 And this really is, I think, what we were
04:31:32 13 talking about right before the break. They don't -- it
04:31:35 14 doesn't have to be by that avenue.

04:31:37 15 Q. By which avenue?

04:31:38 16 A. By the avenue of the absence of a cold call to
04:31:42 17 a particular member of that job title and that company.

04:31:51 18 Q. Okay. But it has to start with someone not
04:31:54 19 getting a cold call, right?

04:31:56 20 A. Absolutely.

04:31:56 21 Q. Okay.

04:31:57 22 A. But you were asking how it would happen in that
04:31:59 23 case, and I don't know whether or not someone in that
04:32:02 24 case was being cold called. But I'll talk about, again,
04:32:07 25 I think what you are asking is that there are a variety

04:32:10 1 of reasons you were asking me, prior to the break,
04:32:15 2 reasons for how it is that cold call agreements --
04:32:30 3 restrictions on cold calling would predict the
04:32:32 4 compensation, and we talked about those varieties. And
04:32:35 5 one of those was the issue of internal equity in the
04:32:39 6 simple job group, which would be you could use the
04:32:42 7 analogy in this group, although I haven't studied this
04:32:45 8 group in particular, I don't have the data as we've
04:32:49 9 talked about.

04:32:50 10 And others could be these issues that have to
04:32:51 11 do with how the structure is set up and the market
04:32:55 12 survey data. And the market survey data, with the
04:32:57 13 variety of the uses of the market data, are -- include
04:33:02 14 suppressed wages that can lead to suppression elsewhere.
04:33:08 15 That's what we talked about right before we broke.

04:33:11 16 Q. Did you examine whether the market data that
04:33:16 17 you're referring to included suppressed wages?

04:33:24 18 A. Again, I don't have wages of individual
04:33:26 19 workers. I'm talking about a prediction based on what I
04:33:28 20 know about the structures and the systems.

04:33:30 21 Q. If you could just answer my question. The
04:33:32 22 question was, did you examine the market data to
04:33:35 23 determine if it included suppressed wages?

04:33:39 24 MS. DERMODY: Object to form.

04:33:43 25 THE WITNESS: I saw some market data, but I

04:33:45 1 didn't examine. And again, it's impossible to -- I
04:33:48 2 think what you are asking is did I see cases where there
04:33:52 3 was suppressed wages because a cold call didn't happen.
04:33:54 4 But I don't know if a cold call would have happened in
04:33:56 5 that place, so I don't --

04:34:01 6 MR. KIERNAN: Q. That's not what I asked
04:34:02 7 at all. I'm asking you did you determine or did you
04:34:05 8 examine whether the market data, to use your words,
04:34:09 9 included suppressed wages?

04:34:12 10 MS. DERMODY: Object to form.

04:34:13 11 THE WITNESS: I think -- I'm sorry, because I
04:34:16 12 think that's what I was answering. And I --

04:34:20 13 MR. KIERNAN: Q. Well, it's yes or no.

04:34:22 14 A. Oh, okay.

04:34:23 15 Q. You either examined it or you didn't.

04:34:25 16 A. I'm sorry. Did I examine market data that
04:34:27 17 included suppressed wages. I didn't have -- I had some
04:34:30 18 market data, but I don't know if the market data, you
04:34:35 19 know, had suppressed wages or not in those instances --

04:34:41 20 Q. Do you know --

04:34:41 21 A. -- because we're talking about this but-for
04:34:43 22 world.

04:34:44 23 Q. Right. Now, you mentioned -- and I'm still
04:34:49 24 confused because you are talking about these various
04:34:52 25 avenues.

04:34:52 1 A. Okay.

04:34:52 2 Q. I just want step by step to understand how this
04:34:56 3 suppression you are predicting would occur using Intel
04:35:02 4 as an example, but we could use any of the defendants.

04:35:04 5 A. Okay.

04:35:06 6 Q. Focusing on Intel. So in some job title,
04:35:12 7 somebody doesn't get a cold call. That's the predicate
04:35:15 8 of your opinions, correct?

04:35:17 9 A. Yeah. I'm not sure, again, the way lawyers use
04:35:21 10 the word predicate. But yeah. What we're talking about
04:35:27 11 here is in a world when the cold calling didn't happen
04:35:31 12 or there was a restriction on the cold calls. So
04:35:33 13 someone didn't get a cold call, that person's wage is
04:35:36 14 lower than they would have been in the absence of the
04:35:39 15 cold calling agreements because -- absolutely. Let's
04:35:43 16 imagine there are some of those people whose wages are
04:35:47 17 lower than they would have been.

04:35:49 18 Q. Uh-huh.

04:35:50 19 A. I'm not sure you asked the question, so....

04:35:52 20 Q. There we go. I want to make sure we're on the
04:35:54 21 same --

04:35:55 22 A. Yes.

04:35:55 23 Q. -- hypothetical. So we're starting with
04:35:59 24 suppressed wages of some employees.

04:36:00 25 A. Absolutely. Okay.

04:36:01 1 Q. Okay.

04:36:01 2 A. So we'll assume we have suppressed wages for
04:36:04 3 some employees.

04:36:04 4 Q. Okay. And taking the next step --

04:36:07 5 A. Okay.

04:36:07 6 Q. -- of how other employees within the same job
04:36:11 7 title are impacted.

04:36:13 8 A. Okay. So I'll use an example of -- let me just
04:36:18 9 use a completely hypothetical example of exactly this.

04:36:21 10 Let's say that we have people who are probably not
04:36:28 11 carpenters. Let's use an occupation of carpenters.

04:36:33 12 Q. Let's use -- can we use this case that you
04:36:35 13 actually studied?

04:36:36 14 A. Sure, let's use engineer IIs, which is an
04:36:39 15 example I actually write down in my example.

04:36:41 16 Q. Well, that's from your book, right?

04:36:44 17 A. Sure.

04:36:44 18 Q. No. I want to use someone from Intel.

04:36:46 19 A. Okay. Let's use an example of an engineer of a
04:36:49 20 particular type. I don't know what the particular types
04:36:51 21 are, but let's use an engineer.

04:36:53 22 Q. Why don't we use the IT support specialist.

04:36:57 23 A. Okay. Let's use -- again, I don't want to use
04:37:03 24 a specific example of a particular -- well, it doesn't
04:37:06 25 matter. Let's use any occupation.

04:37:09 1 If they're -- if it is the case that an
04:37:13 2 employer -- employers use external data. Here is an
04:37:18 3 avenue. We've talked about multiple avenues.

04:37:22 4 Q. So that we're not here all day I want you to
04:37:24 5 focus on Intel.

04:37:25 6 A. We'll use Intel.

04:37:26 7 Q. Please. Intel IT support specialist. That
04:37:32 8 employee, or some group of employees, wages are
04:37:34 9 suppressed because of the agreements.

04:37:36 10 MS. DERMODY: Object to form.

04:37:37 11 MR. KIERNAN: Q. Walk me through how that
04:37:40 12 impact -- that suppression spreads through all
04:37:45 13 35,000 employees in the technical class at Intel.

04:37:48 14 MS. DERMODY: Object to form.

04:37:49 15 THE WITNESS: Again, that's not what I'm
04:37:50 16 saying. I'm saying that there are a variety of ways
04:37:53 17 that the -- there are multiple avenues. We've talked
04:37:57 18 about three. I'll talk about them again. One of the
04:38:01 19 avenues is if -- if I am an employer and I use market
04:38:07 20 data, even on a particular occupation -- it could be on
04:38:09 21 a structure, but on a particular occupation -- and those
04:38:12 22 data are suppressed, and I use those data to think about
04:38:17 23 how to compensate people within my organization, then
04:38:23 24 there can be transmission of that suppression. That's a
04:38:25 25 particular example.

04:38:27 1 MR. KIERNAN: Q. That's a theoretical,
04:38:28 2 hypothetical example. Now, focusing on --

04:38:31 3 MS. DERMODY: Object to form.

04:38:34 4 MR. KIERNAN: Q. -- Intel and Intel's
04:38:37 5 formalized pay systems that you write about, and
04:38:38 6 that you say because of the formalized pay systems
04:38:42 7 you can predict that impact -- that suppression of
04:38:49 8 some employees within the technical class will lead
04:38:51 9 to suppression of all 35,000 technical employees. I
04:38:54 10 want to know how that works.

04:38:58 11 A. I think the things that I'm saying are
04:39:02 12 consistent. And you keep moving back to a particular
04:39:05 13 example, and I don't think it really matters. In that
04:39:08 14 example, the wages that I'm -- the data that I'm using
04:39:12 15 to think about what I'm doing internally are suppressed,
04:39:16 16 and therefore, any wage that I link with that is
04:39:20 17 suppressed. That's one.

04:39:21 18 Let me tell you the other one, which might be
04:39:23 19 more -- any wage that I'm relying on for those data.
04:39:27 20 Another one is the increase survey which I said.
04:39:31 21 Imagine again, let's say it's the case in a particular
04:39:36 22 employee, particular company, that we have a set of
04:39:41 23 compensation, and the market raise next year would be 6
04:39:47 24 percent if there were no agreements.

04:39:51 25 If there are agreements, it's going to be

04:39:52 1 less -- it would be less than 6 percent. That's a
04:39:55 2 logical conclusion. There is less pressure on wages.
04:39:58 3 The external market has -- instead of 6 percent it's a
04:40:02 4 number less than 6 percent. And let's say, then, that
04:40:05 5 you propagate that, take a number, not six but a smaller
04:40:09 6 number, and propagate that, raise everyone -- everyone's
04:40:13 7 wage will be increased by less.

04:40:15 8 That one -- that -- so that's the third example
04:40:20 9 of how I think that this -- I believe that the
04:40:24 10 agreements are predicted to suppress compensation.

04:40:29 11 Q. And can you give a specific example for any
04:40:32 12 defendant? You are struggling with Intel.

04:40:37 13 MS. DERMODY: Objection.

04:40:37 14 MR. KIERNAN: Q. Can you choose another
04:40:38 15 defendant where you can walk me through their
04:40:41 16 specific formalized pay system --

04:40:43 17 A. I don't think I'm struggling with any
04:40:44 18 defendant. I think what I said applies to all
04:40:47 19 defendants. I said the agreements against cold calling,
04:40:49 20 such as the agreements at issue in this case, are
04:40:54 21 predicted to suppress the compensation. And it -- it's
04:41:00 22 the same thing. I mean, I -- that's true of all -- of
04:41:04 23 all defendants.

04:41:07 24 I was just worried because you were talking
04:41:09 25 about specific examples or specific people or something,

04:41:11 1 and it doesn't have to be. Particularly in that last
04:41:15 2 case.

04:41:17 3 Q. Well, the defendants, as you said before, do
04:41:20 4 not have identical pay structures or pay systems.

04:41:24 5 A. That's right.

04:41:25 6 Q. And they may use market data differently.

04:41:29 7 MS. DERMODY: Object to form.

04:41:35 8 THE WITNESS: I don't know that I said they'd
04:41:38 9 use market data differently, but there are only so many
04:41:41 10 ways to use market data. And since all employers -- all
04:41:46 11 seven defendant employers use market data, there are
04:41:51 12 only so many ways you can use market data. And either
04:41:54 13 way, ways one would use market data are certainly
04:41:58 14 consistent with this idea.

04:41:59 15 So I think the fact that they don't have
04:42:01 16 identical systems isn't -- doesn't impact my conclusion.

04:42:16 17 MR. KIERNAN: Q. So assuming there are
04:42:18 18 suppressed wages for some IT support specialists at
04:42:21 19 Intel.

04:42:22 20 A. Okay.

04:42:22 21 Q. Follow me?

04:42:24 22 A. So there's --

04:42:25 23 Q. What avenues --

04:42:27 24 A. I'm sorry. So you are saying they're
04:42:28 25 suppressed because of the cold calling agreements?

04:42:34 1 Q. Yes.

04:42:34 2 A. Okay.

04:42:35 3 Q. Would that make a difference to your analysis?

04:42:36 4 A. No, I just want to make sure I'm answering the

04:42:39 5 question carefully.

04:42:40 6 Q. So assuming suppressed wages for some IT

04:42:43 7 support specialists at Intel --

04:42:45 8 A. I shouldn't say that, what I said. Because I

04:42:49 9 asked the question about something you were about to ask

04:42:53 10 a question about. So it might have an impact, but I

04:42:55 11 don't think it will. You were just saying the wages

04:42:57 12 were suppressed.

04:43:00 13 Q. Assuming suppressed wages for some IT support

04:43:02 14 specialist at Intel.

04:43:03 15 A. Right.

04:43:05 16 Q. Which avenues that you've identified would lead

04:43:11 17 to or could be predicted to suppress the wages of the

04:43:15 18 other IT support specialists?

04:43:18 19 MS. DERMODY: Object to form.

04:43:29 20 THE WITNESS: Well, one of them is the one that

04:43:31 21 we talked about earlier. Immediately I think that the

04:43:34 22 internal equity within the group. And what I'm -- so

04:43:40 23 there is one example.

04:43:43 24 MR. KIERNAN: Q. Right. And would the

04:43:45 25 internal equity -- okay.

04:43:48 1 And then assuming suppressed wages for some IT
04:43:52 2 support specialists at Intel, how would that impact the
04:43:59 3 compensation of employees in a different job title,
04:44:02 4 let's say, mask designer at Intel.

04:44:07 5 A. Again, you are asking about a narrow -- a
04:44:08 6 narrower part of what's going on. So they don't
04:44:13 7 necessarily -- it doesn't necessarily have to be the
04:44:17 8 case that the impact on those particular workers led to
04:44:21 9 the prediction that there would be suppression on
04:44:24 10 others, because there are multiple avenues.

04:44:27 11 So I think I understand where you are coming
04:44:30 12 from. So you are asking if -- so that's it. It doesn't
04:44:35 13 necessarily have to be that avenue. It could be another
04:44:37 14 avenue that leads to my prediction.

04:44:41 15 Q. Okay. The prediction that suppressed wages for
04:44:45 16 some IT support specialists could lead to suppression of
04:44:53 17 the wages in a different job title within the technical
04:44:58 18 class?

04:44:58 19 What I'm trying to ask is how it goes from
04:45:00 20 suppression in one job title to suppression in another
04:45:04 21 job title at Intel in light of its formalized pay
04:45:07 22 system.

04:45:08 23 A. Again, I think that one could be that job
04:45:11 24 titles are similar. Workers are doing similar jobs even
04:45:14 25 across job titles. Possibility. Another is that -- and

04:45:16 1 I think that what the struggle here is you are asking
04:45:19 2 about a narrow slice. I think what you are trying to do
04:45:24 3 is ask me about, you know, given this specific thing
04:45:29 4 happened, how could you lead to these other things.

04:45:31 5 And you are talking about a hypothetical
04:45:34 6 example. I'm talking about given what I know about
04:45:36 7 these structures, there are a variety of avenues. So
04:45:39 8 it's not just because A happened that B had to happen,
04:45:43 9 because it could have been other things that led to B.
04:45:48 10 So it might not have been an impact on those workers, it
04:45:53 11 might have been some impact somewhere else. And that's
04:45:55 12 why there are these multiple -- that's why I keep coming
04:45:58 13 back to the multiple avenues and why I'm struggling with
04:46:01 14 this specific case versus the general case.

04:46:02 15 I'm not trying to be -- sort of evade that,
04:46:05 16 it's just that you are trying to translate a specific
04:46:10 17 question -- you are saying, jeez, given this specific
04:46:14 18 question, there is this general conclusion, and I'm
04:46:16 19 saying I'm not. My conclusions come from something more
04:46:19 20 than a specific example.

04:46:35 21 Q. If -- did Intel have separate salary ranges for
04:46:41 22 each of its job titles?

04:46:50 23 A. I wonder if I can speak to that directly.

04:46:54 24 Q. Let's do it this way.

04:46:55 25 A. Okay.

04:46:56 1 Q. I'll just do it in a hypothetical.

04:46:57 2 A. That would be easier.

04:46:59 3 Q. Much easier.

04:47:00 4 So assume that for each job title at Intel
04:47:03 5 there is a separate salary range.

04:47:06 6 A. Okay.

04:47:07 7 Q. And salary range, what I mean is what we talked
04:47:10 8 about this morning, min, mid, max.

04:47:14 9 A. Okay. So for each job title at Intel where --
04:47:18 10 you are making the assumption that for each job title at
04:47:21 11 Intel you have a min, mid, max.

04:47:26 12 Q. And the midpoint of each job title -- or the
04:47:28 13 midpoint of each salary range of each job title is based
04:47:33 14 on market data for that specific job title. That's part
04:47:39 15 of the hypothetical. Are you following me so far?

04:47:42 16 A. I think, let me -- I just want to make sure I'm
04:47:44 17 following you. Intel, a salary range, min, mid, max for
04:47:53 18 every job title, and that the mid is based on market
04:47:55 19 data of some type.

04:48:00 20 Q. Right.

04:48:00 21 A. Okay.

04:48:00 22 Q. Market data that is pegged to that specific job
04:48:03 23 title.

04:48:03 24 A. Okay.

04:48:06 25 Q. If the suppressed wages are in the market data

04:48:09 1 for the IT specialist, how would that affect the
04:48:16 2 compensation of another job title in the technical
04:48:20 3 class, like the yield engineers?

04:48:23 4 A. Right. It doesn't -- again, this is an
04:48:26 5 example -- sorry to say, but it's an example just like
04:48:29 6 we went through before the break, and the previous bit
04:48:34 7 of time here. That doesn't have to be the propagation
04:48:40 8 mechanism. That's -- you are narrowing the idea into
04:48:43 9 one of the multiple ways this can happen. One way you
04:48:48 10 would use data. But there are other ways you would use
04:48:51 11 market data that would lead to the conclusion that
04:48:57 12 agreements against cold calling are predicted to
04:49:02 13 suppress compensation.

04:49:03 14 So it doesn't necessarily have to be that
04:49:05 15 particular avenue. I realize it's a hypothetical, but
04:49:09 16 there are multiple avenues and there could be another.

04:49:12 17 Q. Okay. Given the assumptions of the
04:49:14 18 hypothetical I gave you --

04:49:18 19 A. Yes.

04:49:20 20 Q. -- would the use of the market data in that way
04:49:24 21 necessarily lead to -- where the suppression of wages
04:49:28 22 and market data for IT specialists lead to an impact on
04:49:34 23 the compensation for an entirely different job title?

04:49:43 24 A. In that question I think you are referring to
04:49:45 25 something we talked about before. So could you say it

04:49:47 1 again? Because I only heard --

04:49:49 2 Q. I'm referring to the same hypothetical where
04:49:51 3 the salary range -- there is a separate salary range for
04:49:55 4 each job title at Intel.

04:49:57 5 A. Okay.

04:49:58 6 Q. And they get different market data for each of
04:50:02 7 those salary ranges, right?

04:50:04 8 A. Okay. So separate midpoint for each job title.

04:50:09 9 Q. Correct.

04:50:09 10 A. Yes.

04:50:11 11 Q. If there's suppression of wages in the market
04:50:15 12 data for the IT specialist --

04:50:20 13 A. Which is one occupation.

04:50:21 14 Q. One occupation.

04:50:23 15 -- would the -- I guess what avenues, then,
04:50:26 16 would cause an impact in the effect of the other job
04:50:30 17 titles?

04:50:32 18 A. Again, I think that your example is specific to
04:50:35 19 talking about -- I'm sorry, I had my hands over -- that
04:50:42 20 there are other ways where you could -- as I described
04:50:47 21 earlier in the example -- where even if you had what you
04:50:51 22 are describing, which is market data by occupation, and
04:50:57 23 you're talking about suppression in occupation A and you
04:51:01 24 are asking how did that lead to suppression in
04:51:04 25 occupation B.

04:51:04 1 Q. Correct.

04:51:05 2 A. So I can't remember the name. Call them A and
04:51:07 3 B.

04:51:07 4 Q. No, no, you're --

04:51:09 5 A. It doesn't have to transmit that way. There
04:51:11 6 are other ways. There are three avenues that we've
04:51:15 7 talked about, at least, so far today that we could --
04:51:19 8 what could happen. You are talking about suppression in
04:51:22 9 one occupation into another, but it could be -- there
04:51:25 10 could be other avenues that that could do.

04:51:27 11 Q. List those for me.

04:51:29 12 A. Yes.

04:51:29 13 Q. Going title to title.

04:51:30 14 A. Here's the example. It's the example we just
04:51:33 15 talked about where we have workers, we have them in
04:51:38 16 their jobs, they all have a salary, let's just say we're
04:51:43 17 talking about salary, and we're thinking about what the
04:51:45 18 raise is going to be next year. And if raises next year
04:51:49 19 are smaller because of suppression, can we use market
04:51:55 20 data to help determ- -- think about raises, then the
04:52:00 21 suppression that leads to a smaller raise in the market
04:52:03 22 can lead back to suppression. That's another example.

04:52:06 23 I think that's -- the problem is that you are
04:52:08 24 trying to talk about specific cases, and there are
04:52:13 25 multiple mechanisms that lead me to the conclusion that

04:52:16 1 if you restrict cold calling, there is the prediction of
04:52:29 2 a suppression of compensation. Yeah.

04:52:34 3 Q. You just talked about the overall budget being
04:52:37 4 suppressed; is that following your avenue?

04:52:42 5 A. I didn't say the overall budget. I was talking
04:52:45 6 about a number you might get from the market based on
04:52:47 7 what salary predictions or expectations might be. But
04:52:51 8 not -- I didn't say the word budget.

04:53:05 9 Q. Okay. Did Intel use the market data in the way
04:53:07 10 that you just described?

04:53:13 11 A. Intel used market data. I can't remember, but
04:53:16 12 I'll look here to see. There are seven defendants, lots
04:53:21 13 of documents. I'll try to look to see -- there are two
04:53:24 14 places I could look quickly -- well, there are probably
04:53:27 15 more than two. But right off the top of my head, I'm
04:53:30 16 not sure exactly how they use market data.

04:53:32 17 I do know that Intel used market data because
04:53:36 18 all defendants used data of some sort from the market.
04:53:39 19 But I can look if you -- I'm happy to look.

04:53:42 20 Q. If they didn't use it in the way that you just
04:53:45 21 described, how would suppression of compensation in one
04:53:51 22 job title transmit to suppression of compensation in
04:53:56 23 another job title?

04:53:57 24 A. You know, there are other avenues, like we
04:53:59 25 talked about before, where internal equity concerns

04:54:01 1 where one job title -- again, there -- again, we've
04:54:04 2 talked about at least three. I'm counting.

04:54:07 3 One other avenue would be issues of internal
04:54:10 4 equity. Where even people who are doing different kinds
04:54:15 5 of jobs could be in related levels and so on. So
04:54:23 6 suppression in one, because of equity concerns, could be
04:54:25 7 suppression of others. I'm thinking of an example might
04:54:28 8 be a head of one group or a head of another group, where
04:54:32 9 if you want all heads to be the same because of some
04:54:34 10 culture or something in the organization, that that
04:54:36 11 could propagate that way as well.

04:54:40 12 So it's back to the internal equity concern
04:54:42 13 that we talked about before the break in what you called
04:54:45 14 Exhibit 2. It might not be exactly people in that
04:54:49 15 occupation -- occupation wasn't the word you used -- job
04:54:51 16 title -- could be in related job titles where internal
04:54:55 17 equity concerns could matter as well.

04:54:57 18 Q. And is that how we can use Intel -- is that how
04:55:02 19 Intel applied internal equity if it applied across job
04:55:05 20 titles as you just described?

04:55:07 21 A. I don't know in particular. I do know that
04:55:10 22 Intel followed principles of internal equity, but I'm
04:55:12 23 not sure if they did in precisely the way I just
04:55:16 24 mentioned. I'd have to look. I can look at my
04:55:20 25 internal -- see if I have sort of evidence of that if

04:55:22 1 you want me to try to find it in here. So I don't know
04:55:27 2 in particular if they did that in that specific way.

04:55:30 3 Q. But isn't it necessary for your prediction that
04:55:35 4 suppression of wages in one job title would spread to
04:55:37 5 all other job titles?

04:55:40 6 MS. DERMODY: Object to form.

04:55:43 7 THE WITNESS: My prediction about -- I don't
04:55:45 8 make a prediction about that prediction.

04:55:47 9 MR. KIERNAN: Q. Which prediction?

04:55:49 10 A. I don't make a -- I don't make that specific
04:55:51 11 prediction that you did, although it's consistent with
04:55:53 12 my big -- my overall prediction. But I don't -- again,
04:55:58 13 it's not necessary to have any one of these particular
04:56:03 14 avenues. There are multiple avenues that lead to the
04:56:06 15 prediction. And they're all fundamentally based on
04:56:11 16 multiple issues here, one of which is formalized
04:56:16 17 structures and pay systems.

04:56:18 18 And another is principles of internal equity,
04:56:21 19 uses of market data, and others that we've been talking
04:56:25 20 about today.

04:56:31 21 Q. Okay. Focusing on Apple for a minute.

04:56:45 22 A. Apple?

04:56:45 23 Q. Yes.

04:56:47 24 A. Okay.

04:56:48 25 Q. Which features of the -- their compensation

04:56:54 1 system leads you to the prediction that suppression of
04:57:02 2 compensation of an employee with one job title would
04:57:06 3 necessarily result in an impact to other employees in
04:57:10 4 entirely different job titles?

04:57:11 5 A. Was the first word you said bear -- or not the
04:57:14 6 first word, but an early word? I just didn't --

04:57:17 7 Q. I said focusing on Apple, which features of its
04:57:22 8 compensation system leads you to the prediction that
04:57:25 9 suppression of compensation of an employee with one job
04:57:29 10 title would lead to an impact to other employees in
04:57:34 11 entirely different job titles?

04:57:39 12 A. I think it seems to me that that's the same
04:57:41 13 question that you just asked about the previous company.
04:57:44 14 And I'm not sure that I say that.

04:57:47 15 I don't say that one in one job title leads to
04:57:50 16 another in another job title because there are multiple
04:57:52 17 avenues. So again, I think what you are saying is you
04:57:55 18 are giving a hypothetical example of a particular thing
04:57:58 19 that happened and how does that lead to the general
04:58:00 20 conclusion. And that's not -- that's not what I did.
04:58:05 21 And it's not necessary that that happened for there to
04:58:08 22 be -- to lead me to the conclusion that the
04:58:12 23 suppression -- or sorry, that the existence of
04:58:18 24 no-cold-calling agreements led to suppression of wages.
04:58:23 25 My prediction. I meant to say prediction.

04:58:30 1 Q. Have you reached an opinion whether detrimental
04:58:34 2 impact to an employee with one job title would
04:58:37 3 necessarily result in impact to other employees in an
04:58:39 4 entirely different job title?

04:58:43 5 MS. DERMODY: Object to form.

04:58:50 6 THE WITNESS: Have I reached an opinion about
04:58:53 7 whether a negative impact on an employee would -- in one
04:58:57 8 job title would necessarily impact those in another job
04:58:59 9 title? I haven't -- again, I haven't thought about
04:59:03 10 this specific job title to job title thing that you've
04:59:06 11 just brought up before carefully, and I'd like to think
04:59:09 12 about that. But I certainly haven't made a general
04:59:13 13 opinion about that.

04:59:14 14 MR. KIERNAN: Q. Okay. How do you -- you
04:59:18 15 mentioned equity throughout today. How do the --
04:59:26 16 does each defendant company interpret internal
04:59:32 17 equity in the same way?

04:59:40 18 A. I think it's hard to say the company, because
04:59:42 19 there are lots of people in the company. You just
04:59:44 20 described an example of a company that had 35,000
04:59:47 21 employees. But I could say from the -- based on the
04:59:51 22 evidence that I read, all those depositions, lots of
04:59:56 23 things that came from PowerPoints or emails or whatever,
04:59:59 24 that there's certainly evidence that's consistent with
05:00:03 25 the fact -- or there is evidence that each defendant

05:00:08 1 followed principles of internal equity.

05:00:10 2 So whether they did it in precisely the same
05:00:12 3 way, I'm not sure what you mean. But they certainly all
05:00:15 4 follow those principles.

05:00:18 5 Q. It's your understanding that it was a factor
05:00:22 6 considered by the managers who were making the pay
05:00:25 7 decisions at the companies in making their ultimate pay
05:00:31 8 decision for either new hires or existing employees?

05:00:40 9 A. Are you asking if it's my opinion that --

05:00:42 10 Q. Well, is it -- what is your understanding of
05:00:46 11 who at each individual company was taking internal
05:00:51 12 equity into account?

05:00:52 13 A. Again, I think that each defendant was
05:00:54 14 following principles of internal equity. Whether that
05:00:59 15 was -- you know, there is a lot of evidence from it in
05:01:04 16 some training materials or in PowerPoints and
05:01:06 17 descriptions and emails. So whether every employee was
05:01:11 18 thinking about that or not, I don't know. But it
05:01:14 19 certainly was part of the as-is sort of feature of many
05:01:21 20 of these kinds of systems. It certainly was a feature
05:01:24 21 that people are cognizant of. I think it's sort of a
05:01:28 22 natural human feature, in some sense, to be thinking
05:01:32 23 about equity concerns.

05:01:35 24 Q. And the way in which it was used at a defendant
05:01:39 25 company is it didn't mean that everyone was paid exactly

05:04:43 1 THE WITNESS: You know, I think that it could
05:04:46 2 depend. I think that sometimes very rapidly, and
05:04:50 3 sometimes, as is the suggestion in these examples, that
05:04:55 4 companies are cognizant. And every defendant, they're
05:04:58 5 following principles of internal equity. Figures 12,
05:05:03 6 13, 14, 15 and 16 I think there are consistent with that
05:05:08 7 in an explicit way.

05:05:09 8 There are lots of other examples in here. But
05:05:11 9 those are examples where organizations are concerned
05:05:15 10 with that where it's not immediately resolved. And it
05:05:19 11 could take some time.

05:05:23 12 MR. KIERNAN: Q. Using Adobe, since we had
05:05:35 13 an example of someone getting a raise. If someone
05:05:40 14 gets a raise because of a cold call at Adobe --

05:05:45 15 A. Is this the example of the 20,000 that we've
05:05:47 16 been talking about?

05:05:48 17 Q. Let's just use -- I'm not going to use names.

05:05:51 18 A. Okay.

05:05:52 19 Q. Employee A gets a raise because of a cold call.

05:05:54 20 A. Okay.

05:05:59 21 Q. Due to issues of internal equity at Adobe being
05:06:05 22 considered by individual managers, how long would it
05:06:08 23 take for someone else's compensation to be impacted?

05:06:14 24 MS. DERMODY: Object to form.

05:06:18 25 THE WITNESS: I don't -- that's a specific -- I

05:06:20 1 think it would depend.

05:06:22 2 MR. KIERNAN: Q. Would it impact anyone
05:06:24 3 else's compensation?

05:06:25 4 A. Again, as I said, it -- there are various
05:06:30 5 avenues by which this propagation can happen.

05:06:35 6 Q. Just focusing on internal equity. That's all I
05:06:37 7 want to focus on.

05:06:39 8 A. Okay.

05:06:39 9 Q. So one individual --

05:06:40 10 A. Sure. Sometimes -- there are certainly
05:06:41 11 examples -- you could think of examples -- your
05:06:44 12 hypothetical example. Let's say company A in a work --
05:06:47 13 sorry, employee A in a work group, say there are two
05:06:51 14 people doing that job. And that person -- they're both
05:06:55 15 doing very similar jobs. Internal equity, if that -- if
05:07:00 16 one gets a raise because of a cold call, it's certainly
05:07:03 17 possible, because of internal equity that another person
05:07:05 18 would get a raise immediately.

05:07:07 19 Q. It's also possible that it wouldn't happen,
05:07:11 20 right?

05:07:11 21 A. It's -- internal equity concerns would suggest
05:07:14 22 that there is pressure on the other person. It is a
05:07:17 23 possibility that it not happen, yes. That it not happen
05:07:20 24 immediately.

05:07:21 25 Q. Or that it wouldn't happen at all?

05:07:24 1 MS. DERMODY: Object to form.

05:07:25 2 THE WITNESS: If they're really identical
05:07:27 3 workers, and they're really doing the same thing, it
05:07:29 4 would be surprising to me that there wouldn't be
05:07:32 5 pressure due to -- due to equity concerns. If they're
05:07:38 6 really performing the similar task or identical task, as
05:07:43 7 we were talking about in this case.

05:07:43 8 MR. KIERNAN: Q. Well, wouldn't it depend
05:07:45 9 on the manager making the decision?

05:07:48 10 MS. DERMODY: Object to form.

05:07:50 11 THE WITNESS: I don't think it would depend --
05:07:51 12 if we're talking about identical workers, literally
05:07:53 13 identical, which is the hypothetical example -- I'm --

05:07:55 14 MR. KIERNAN: Q. Can you name two
05:07:56 15 identical workers at Adobe or at any of these seven
05:07:59 16 companies?

05:08:00 17 MS. DERMODY: Object to form.

05:08:01 18 THE WITNESS: I can -- I don't know workers at
05:08:06 19 Adobe. But I can think of workers in my past who were
05:08:14 20 roughly identical.

05:08:16 21 MR. KIERNAN: Q. Well, I want to focus on
05:08:17 22 the seven defendants because that's who you
05:08:19 23 examined.

05:08:20 24 A. I know. We were just talking about a
05:08:22 25 hypothetical example and I was talking about identical

05:08:24 1 workers. So that's why I used that example.

05:08:27 2 Q. What if they're not identical workers at Adobe?

05:08:31 3 A. Uh-huh.

05:08:32 4 Q. And each is given performance ratings, and
05:08:36 5 managers are making subjective determinations of their
05:08:40 6 value to the company, how much their worth, their skill
05:08:43 7 sets, their performance, it's possible that despite
05:08:49 8 issues of internal equity, a bump to one person would
05:08:53 9 not lead to a bump to somebody else.

05:08:57 10 MS. DERMODY: Object to form.

05:09:00 11 THE WITNESS: The reason I'm hesitating a
05:09:02 12 little bit is there were lots of pieces in there. But
05:09:05 13 it's possible, I think I just said this earlier, maybe
05:09:07 14 three minutes ago, that it's possible that when one
05:09:12 15 worker gets a bump due to a cold call, and then she
05:09:15 16 negotiates with the firm to increase her wage in the
05:09:20 17 incumbent firm, that people near her don't immediately
05:09:25 18 get wage changes. That's certainly possible.

05:09:28 19 But at the same time, internal equity concerns,
05:09:30 20 among other things, would suggest that there is then
05:09:32 21 pressure on the wages of people in doing similar work.

05:09:39 22 MR. KIERNAN: Q. Wouldn't that, though,
05:09:40 23 depend on a number of other factors, that is,
05:09:42 24 whether there was, in fact, pressure?

05:09:46 25 MS. DERMODY: Object to form.

05:09:47 1 MR. KIERNAN: Q. So for example, take your
05:09:52 2 hypothetical, or [REDACTED], for that matter. He's a
05:09:59 3 high-impact employee being paid less than some lower
05:10:02 4 performing employees. He gets a raise. What
05:10:07 5 pressure would that have on the lower employee --
05:10:11 6 the lower performing employees?

05:10:15 7 A. Anytime there are people who are -- humans who
05:10:21 8 are working in a group together, there are comparisons
05:10:24 9 made across them. So people are, I think, frequently
05:10:28 10 making comparisons. There is large literatures about
05:10:33 11 inequality and related things where people compare
05:10:37 12 themselves to others.

05:10:39 13 And I think that when -- even if you can
05:10:46 14 imagine a work group, or even if people aren't doing the
05:10:49 15 same kind of job, if they hear other people are getting
05:10:53 16 wages, if they're in similar kinds of things, they
05:10:56 17 might sort of -- there's extra pressure. There is new
05:11:00 18 information about wages increasing and internal equity
05:11:01 19 concerns, and that hypothetical example could certainly
05:11:03 20 lead to other people asking more, negotiating more, or
05:11:06 21 having more information that they might be more valuable
05:11:09 22 than they thought.

05:11:12 23 Q. But it doesn't necessarily lead to an impact to
05:11:15 24 those other people?

05:11:16 25 A. Again, I agree that that particular case or

05:11:19 1 that example, that doesn't -- doesn't have to, though,
05:11:23 2 for my conclusions, because of the multiple avenues that
05:11:26 3 we've talked about in this last sort of -- since our
05:11:29 4 last break. That it doesn't necessarily have to be the
05:11:32 5 case, for one thing, for that example to have this
05:11:37 6 mechanism that -- I'm trying to use the same language.

05:11:41 7 That it doesn't have to be the case for that
05:11:45 8 hypothetical example to lead to suppression of
05:11:51 9 compensation. It just has to -- but that's a possible
05:11:55 10 mechanism. But there are others.

05:11:57 11 Q. But one of the mechanisms would have to operate
05:12:03 12 for there to be widespread impact, correct?

05:12:14 13 A. Certainly --

05:12:15 14 Q. There has got to be at least one.

05:12:17 15 A. There has got to be a mechanism that leads to
05:12:19 16 it, yeah. Absolutely. And as we've talked about, we've
05:12:22 17 talked about at least three of them in the last segment.

05:12:25 18 MR. KIERNAN: Okay.

05:12:26 19 THE VIDEOGRAPHER: We're going off the record
05:12:27 20 at 5:12 p.m.

05:12:28 21 This marks the end of tape No. 3 in the
05:12:31 22 deposition of Kevin Hallock.

05:12:41 23 (Recess taken.)

05:35:17 24 THE VIDEOGRAPHER: We're back on the record at
05:35:18 25 5:35 p.m.

05:39:58 1 data, to answer your question, is not on those specific
05:40:00 2 jobs, but on average, what is the raise going to look
05:40:04 3 like. What would the average raise look like this year.

05:40:06 4 And in this example, this person was talking
05:40:09 5 about 4 percent or maybe even closer to 3 percent, but
05:40:12 6 that's another kind of market data, just what are raises
05:40:18 7 going to look like next year.

05:40:23 8 Q. And for that to be an avenue, for the
05:40:27 9 transmission of suppression of compensation of some
05:40:32 10 employees to all or nearly all of the technical class,
05:40:37 11 that market data has to also be suppressed; is that
05:40:39 12 correct?

05:40:41 13 MS. DERMODY: Object to form.

05:40:43 14 THE WITNESS: The idea on this avenue -- we
05:40:45 15 talked about multiple avenues. The idea is -- so again,
05:40:50 16 there are a variety of reasons why I come to the
05:40:53 17 prediction that the suppression -- or that the
05:40:57 18 no-cold-call agreements led to -- predicted to suppress
05:41:04 19 the compensation of all of compensation is -- one avenue
05:41:09 20 is if raise information -- if there is suppression and
05:41:16 21 raises are going to be smaller because of suppression,
05:41:19 22 that could get transmitted back if those data are used
05:41:22 23 to propagate through a system.

05:41:25 24 MR. KIERNAN: Q. So if I understand what
05:41:26 25 you are saying, if the overall salary increase

05:41:31 1 budget for a year was lower because of the
05:41:36 2 suppression of compensation for some employees due
05:41:43 3 to the agreements, that could lead to suppression
05:41:47 4 for all or nearly all technical employees. Is that
05:41:50 5 what you are saying?

05:41:51 6 A. It's certainly the case that if the data --
05:41:54 7 what I'm saying here, the prediction here, is that if
05:42:01 8 the market data are -- for the raise, what the market is
05:42:05 9 talking about, the expected raise next year is
05:42:08 10 suppressed, then relying on those data to make raises
05:42:12 11 next year can be predicted to lead to suppression back
05:42:18 12 in those organizations that are using those data, which
05:42:20 13 I think is what you said. Slightly different words.

05:42:23 14 Q. And is it your testimony that it would be
05:42:26 15 predicted to impact all or nearly all of the technical
05:42:31 16 class if that condition were met?

05:42:40 17 A. If that particular condition were met. I want
05:42:42 18 to think about that because there are various
05:42:45 19 mechanisms. Certainly can be predicted.

05:42:52 20 So let me say it this way: If an organization
05:42:59 21 uses -- bases its raise this year, its average raise on
05:43:05 22 market data that's suppressed, and they use a smaller
05:43:09 23 number than they would have in the absence, and they
05:43:11 24 have a system then for doing that, say they gave an
05:43:14 25 across-the-board raise, which is a hypothetical example,

05:43:17 1 although there are examples of that in this case, then
05:43:21 2 if they're giving an across-the-board raise based on
05:43:24 3 market data, they would be given a smaller raise. So it
05:43:26 4 would affect all or nearly all.

05:43:28 5 Q. What if it were the fact -- facts that the
05:43:33 6 managers were provided a budget and were given
05:43:38 7 discretion to allocate that budget as they see fit?

05:43:45 8 A. I think that's the -- that -- that is the
05:43:49 9 same -- the same concern -- the same issue in the sense
05:43:52 10 that the budget -- that still applies, because that
05:43:58 11 budget, in the example -- in one of the avenues that
05:44:03 12 could lead to my conclusions, those budgets don't come
05:44:08 13 out of nowhere. They can come out of the use of market
05:44:11 14 data. So I think that that's just a subset of what we
05:44:14 15 just talked about.

05:44:17 16 Q. To test that theory, would you have to analyze
05:44:20 17 how a manager, in fact, allocated the additional -- or
05:44:26 18 the merit budget increases?

05:44:28 19 MS. DERMODY: Object to form.

05:44:30 20 THE WITNESS: So to test my prediction?

05:44:33 21 MR. KIERNAN: Q. Uh-huh.

05:44:35 22 A. Again, I haven't -- I made a prediction. I was
05:44:38 23 asked to comment on these two areas. So I'd want to
05:44:41 24 think about that. As an example of a more broader
05:44:45 25 question you asked earlier about how would one do a

05:44:49 1 study of estimating magnitudes, and that's not something
05:44:54 2 that I was asked to do.

05:44:57 3 Q. Can you turn to figure 12.

05:45:01 4 A. Sure.

05:45:16 5 MS. DERMODY: Figure 12 on 112.

05:45:18 6 THE WITNESS: Figure 12. I've got it.

05:45:21 7 Page 112.

05:45:22 8 MR. KIERNAN: Q. And this is the merit
05:45:23 9 increase matrix from Google; is that correct?

05:45:25 10 A. Yep.

05:45:26 11 Q. And this relates to base pay?

05:45:28 12 A. Again, we talked about that earlier this
05:45:31 13 morning before lunch, and --

05:45:36 14 Q. And you didn't know?

05:45:37 15 A. Well, we talked about salaries because of the
05:45:39 16 footnote to salaries.

05:45:41 17 Q. Right.

05:45:42 18 A. So we could speculate that this is about
05:45:43 19 salaries, but it doesn't -- I don't think it matters,
05:45:45 20 really, to the conclusion.

05:45:56 21 Q. We focused today, and your report appears to be
05:46:00 22 focused on impacts to base pay. Have you reached an
05:46:05 23 opinion on predictions -- strike that.

05:46:09 24 Have you analyzed whether suppression of
05:46:18 25 compensation in the form of bonuses or equity would be

05:52:18 1 Q. Yes.

05:52:18 2 A. And what's the question?

05:52:19 3 Q. If there was suppression of equity in the one
05:52:23 4 job title, would you predict that all or nearly all
05:52:28 5 employees in the technical class at Adobe, their
05:52:31 6 compensation would also be suppressed, including
05:52:36 7 individuals who were not eligible for equity?

05:52:39 8 A. Well, there are two parts. Again, got me
05:52:45 9 thinking about something else, but let me solve this one
05:52:51 10 first. That's not necessarily the case, that that would
05:52:54 11 be the propagation mechanism.

05:52:59 12 But -- so it doesn't have to be the case that
05:53:01 13 because of the suppression there, that it's propagated
05:53:04 14 to everyone else. We talked multiple mechanisms
05:53:08 15 earlier. I think we talked about three.

05:53:11 16 It is the case, though, it's possible, so I'm
05:53:14 17 trying to get to what I think you are talking about.
05:53:16 18 It's possible that if there is suppression of one form
05:53:19 19 of compensation, let's say that this person has more
05:53:23 20 equity, people over here aren't paid in equity, but they
05:53:25 21 see that they're being paid more in one way or another.
05:53:28 22 And internal equity concerns would say that those people
05:53:31 23 over here who aren't eligible for equity in this job
05:53:34 24 title, there could be upward pressure on their wages in
05:53:40 25 the absence of the cold calling agreements.

05:53:44 1 So even though they're not eligible for
05:53:47 2 equity -- we're using the word equity for stock. Even
05:53:51 3 though they're not eligible for stock, concerns of
05:53:55 4 internal equity could still put downward pressure on
05:53:59 5 their wages in the presence of the cold calling.
05:54:03 6 Because without the cold calling, the people over here
05:54:07 7 are getting much more equity. They're being paid more
05:54:09 8 overall. And there would be pressure here.

05:54:11 9 Now, that gets me back to the thing that you
05:54:13 10 said earlier, which I think you were asking about, and I
05:54:16 11 was focused on the specific example. It's possible that
05:54:23 12 propagation happens in -- from job title to job title.
05:54:27 13 I think I said I was getting confused because you were
05:54:31 14 talking about a specific example.

05:54:33 15 But imagine job title A and job title B,
05:54:39 16 they're separate job titles. Suppression here -- sorry,
05:54:42 17 the absence of suppression, that is ratcheting up of
05:54:45 18 wages because of cold calling in, doesn't have to just
05:54:49 19 affect people in the work group. It could affect people
05:54:51 20 nearby because they're seeing -- they're seeing the
05:54:54 21 people like them, similar job, same company, that that
05:55:00 22 ratcheting up could propagate throughout also.

05:55:03 23 That, I think, is what you were asking me about
05:55:05 24 earlier and I just don't think I was clear about it. I
05:55:08 25 mean, it's another mechanism of the, you know -- I was,

05:55:12 1 I think, fixated on your specific examples.

05:55:14 2 Q. I asked you how that could happen. And you
05:55:17 3 said, well, the avenue it could happen is through market
05:55:20 4 data. So I want to know how it goes from one job title
05:55:23 5 to another --

05:55:24 6 A. Another could be through internal equity
05:55:25 7 concerns.

05:55:26 8 Q. Okay. How did that work --

05:55:28 9 A. I was thinking mostly about this. But it could
05:55:30 10 be that you have people doing one job, in one job title,
05:55:38 11 people doing another job in another job title that's
05:55:41 12 similar, and they see wages going up over here. They're
05:55:47 13 talking about their wages, compensation is going up in
05:55:49 14 the market, and I think that that adds to upward
05:55:52 15 pressure.

05:55:52 16 Q. So it would depend upon the employees in the
05:55:55 17 other job title knowing what the employees in that other
05:55:59 18 job title made?

05:56:00 19 A. No, not necessarily. That's -- that could be
05:56:03 20 one avenue. But it also could be that managers are
05:56:07 21 looking across, oh, they're kind of similar work and we
05:56:10 22 want to treat people equitably.

05:56:12 23 Q. Any evidence of that? Can you point to any
05:56:16 24 evidence where managers considered compensation of other
05:56:22 25 job titles when making compensation decisions for

05:56:26 1 members of their team?

05:56:29 2 A. I certainly can think of --

05:56:32 3 Q. Point it out to me.

05:56:33 4 A. Sorry.

05:56:34 5 Q. Including --

05:56:37 6 A. Sorry. Let me finish my answer. I certainly

05:56:39 7 can think of ones where it's within their job group, but

05:56:43 8 I'm not sure about job titles. So there are examples

05:56:46 9 here, well, what about equity concerns and so on. And

05:56:48 10 I'm just trying to remember if they were in different

05:56:50 11 job titles, so --

05:56:52 12 Q. Did managers --

05:56:53 13 MS. DERMODY: I'm sorry. You are talking over

05:56:54 14 each other.

05:56:55 15 MR. KIERNAN: Thank you.

05:56:56 16 THE WITNESS: Let me finish.

05:56:57 17 An example was the one we talked about, I think

05:57:01 18 it was [REDACTED]. We were talking about somebody with

05:57:04 19 \$400,000 -- was somebody wanting to come in with

05:57:07 20 \$400,000 salary. And they were saying would this cause

05:57:11 21 equity concerns relative to [REDACTED] I can't remember

05:57:15 22 it precisely. If you can find it, I'd be happy.

05:57:18 23 MR. KIERNAN: Q. Yeah. 114. Is it 115?

05:57:20 24 It's one of these.

05:57:21 25 A. 115.

05:57:22 1 Q. 115.

05:57:24 2 A. So I don't know, they may have been the same
05:57:26 3 job title, they might have been the same -- but it could
05:57:29 4 actually be a different job title. It could be the
05:57:33 5 director of one functional area and a director of, you
05:57:36 6 know, the head of one functional area and the head of
05:57:38 7 another functional area.

05:57:40 8 And even pressure -- internal equity doesn't
05:57:46 9 have to mean the same job. There is a system. There is
05:57:50 10 a philosophy across the company. And if people in an
05:57:54 11 area that's really unrelated, if the wages are going up
05:57:58 12 in an area that are, say, even outside of this, a
05:58:04 13 technical nature, and nontechnical nature, still, people
05:58:08 14 are making comparisons across those two things.

05:58:10 15 Q. But you are assume -- Dr. Hallock, you are
05:58:12 16 assuming that, correct?

05:58:14 17 MS. DERMODY: Object to form.

05:58:14 18 MR. KIERNAN: Q. You are assuming that the
05:58:16 19 managers that are making compensation decisions for
05:58:20 20 different job titles are comparing the decisions
05:58:25 21 they're making.

05:58:28 22 A. You were asking me about whether I could find a
05:58:30 23 specific example of this happening across job titles.

05:58:33 24 Q. And you couldn't find one, correct?

05:58:35 25 A. No, I just began to look. I wondered if this

05:58:37 1 one where Ms. Morris was saying [REDACTED] is a strong
05:58:40 2 negotiator and would expect to be keeping his base
05:58:43 3 salary at 400K, however I am recommending that he come
05:58:46 4 in slightly below in base because of internal equity
05:58:48 5 relative to [REDACTED]. And I was wondering if maybe
05:58:51 6 we knew what their job titles were.

05:58:53 7 Q. Do you know?

05:58:53 8 A. I don't know here, no.

05:58:54 9 Q. Okay.

05:58:56 10 A. And I -- so I wasn't saying I don't -- I can't
05:59:00 11 find one immediately upon asking.

05:59:06 12 Q. What are the conditions that are necessary for
05:59:09 13 internal equity to call employees in different job
05:59:14 14 titles, or that would cause an impact of compensation at
05:59:19 15 one job title to propagate, as you used the term, to
05:59:24 16 another job title?

05:59:27 17 A. Again, I think that's one of the multiple
05:59:29 18 mechanisms we talked about. And I think that this is a
05:59:36 19 sort of well-discussed issue in the -- in teaching in
05:59:42 20 practice and the literature on compensation, that there
05:59:47 21 needs to be some sort of -- that, you know, from a
05:59:51 22 psychological perspective or the academic perspective,
05:59:55 23 that one's inputs in their compensation are in some ways
06:00:01 24 related.

06:00:01 25 And so I'm -- some are saying that based on

06:16:02 1 I think. I mean -- I think that's --

06:16:10 2 Q. But the zeros are still making zeros, whether
06:16:13 3 you divide it by two or not, right?

06:16:15 4 A. Yep.

06:16:16 5 Q. So there is still a group of employees at
06:16:18 6 Google that would not be impacted by reducing the merit
06:16:23 7 increase budget?

06:16:25 8 A. Okay. I see what you are saying. So what you
06:16:32 9 are saying is, let's take this grid, which is based on a
06:16:38 10 hypothetical example you are making -- you are using,
06:16:40 11 there is a -- Google is relying on market data to think
06:16:46 12 about what its merit increase is going to be. They
06:16:50 13 create this grid in one scenario.

06:16:53 14 In another scenario, in the world where there
06:16:58 15 aren't restrictions on cold calling, the numbers would
06:17:01 16 be bigger in the grid. Zeros are still zero, but the
06:17:04 17 numbers would be bigger. You were doing it the other
06:17:07 18 way, but it doesn't matter. And what you are saying is
06:17:11 19 in that case, there are some workers in this example,
06:17:19 20 where that propagation mechanism wouldn't be in play.

06:17:27 21 In that example, let me see. That's a -- so of
06:17:33 22 the sort of multiple propagation mechanisms we
06:17:38 23 mentioned, in that example, if you were going to give
06:17:42 24 someone a zero -- yeah. In the hypothetical example
06:17:45 25 where you were going to give a zero, if you were going

06:17:48 1 to do it exactly as you said, divide every number by the
06:17:52 2 same amount, if you are dividing zero by zero you are
06:17:55 3 still getting zero.

06:17:55 4 So there would be workers that -- on the fringe
06:17:57 5 who have very, very low performance rating, or very high
06:18:02 6 in range, who wouldn't, in that circumstance -- their
06:18:09 7 wage wouldn't -- wouldn't be affected in that instance.
06:18:13 8 In the case of that example.

06:18:25 9 That hypothetical under that, I think that
06:18:30 10 seems to me like that's possible.

06:18:41 11 MS. DERMODY: Are those your last notes?

06:18:44 12 MR. KIERNAN: Pretty much.

06:18:48 13 Q. Where in your report -- or can you point to me
06:18:50 14 in your report the avenues that you are relying upon as
06:18:59 15 a basis for your opinion that a suppression of
06:19:05 16 compensation of some is predicted to lead to suppression
06:19:10 17 of compensation to all? You discuss internal equity,
06:19:14 18 and I know where that section is.

06:19:16 19 A. Right.

06:19:16 20 Q. What are the other avenues that you are relying
06:19:19 21 upon?

06:19:19 22 A. You mean these multiple avenues we've been
06:19:22 23 talking about today?

06:19:23 24 Q. Correct.

06:19:24 25 A. I don't know that they're sort of called out in

06:19:27 1 any particular sections, but those multiple avenues are
06:19:29 2 the ones that -- you know, internal equity is one, one
06:19:34 3 is the market use of data. So there aren't separate
06:19:37 4 sections, if that's what you are -- as I look at the
06:19:39 5 contents.

06:19:40 6 But I can -- you know, we can talk about them
06:19:42 7 again. And there are certainly instances of these -- I
06:19:49 8 imagine here at various spots, but it's not organized in
06:19:52 9 that way.

06:19:56 10 Q. Okay.

06:19:56 11 A. I can look.

06:21:05 12 Q. Dr. Hallock, are you able to point to me
06:21:06 13 whether it identifies the avenues that you are relying
06:21:09 14 upon?

06:21:09 15 MS. DERMODY: Object to form.

06:21:11 16 THE WITNESS: We've talked about those avenues,
06:21:12 17 and I'm just -- I'll keep looking. I'm sorry.
06:21:18 18 Certainly internal -- well, first, one, is internal
06:21:22 19 equity, which starts on page 54, and I guess goes from
06:21:27 20 33 to 56. I also talk about internal equity in other
06:21:33 21 areas, so I don't really want to be pinpointing others.
06:21:36 22 And I can look to find -- be happy to continue looking
06:21:39 23 for the others.

06:21:51 24 MR. SHAH: Can we take a break?

06:21:52 25 MR. KIERNAN: Actually, I'm going to take a

06:21:54 1 five-minute break so I can go through my notes.

06:21:58 2 THE VIDEOGRAPHER: We're going off the record
06:21:59 3 at 6:21 p.m.

06:22:01 4 (Recess taken.)

06:38:18 5 THE VIDEOGRAPHER: We're back on the record at
06:38:19 6 6:38 p.m.

06:38:22 7 MR. KIERNAN: Q. Okay. One of the things
06:38:25 8 that we haven't discussed that's in your report is
06:38:29 9 the top of the box theory that you described in
06:38:34 10 several places. I think it's 20 -- 207, 229,
06:38:45 11 probably some other places in the report.

06:38:54 12 And when you refer to top of the box, what are
06:38:57 13 you referring to when -- what is the box referred to?

06:39:03 14 A. Let me see. Can you tell me which -- I don't
06:39:06 15 know -- you used the words top of the box theory. And I
06:39:12 16 remember top of the box.

06:39:14 17 Q. Paragraph 229, page 67.

06:39:16 18 A. I'm sorry. 229 is in section X. Oh, no. It's
06:39:23 19 in section XI.

06:39:51 20 Okay. I'm sorry. I'm there on 229. I just
06:39:58 21 looked at -- the top of the box is in there.

06:40:00 22 Q. When you referred to "box," what are you
06:40:03 23 referring to?

06:40:04 24 A. Taking example -- I'm talking about figure 7
06:40:07 25 there when I say top of the box, at least in 229. So

06:40:10 1 figure 7 is an example of a box like we were talking
06:40:18 2 about earlier. Given a job grade, there is a salary
06:40:20 3 minimum and a salary maximum. I'm calling them boxes
06:40:24 4 there because they look like -- they're rectangles.
06:40:28 5 They're not really boxes, they don't necessarily have
06:40:30 6 width, but they could just be a line from the bottom,
06:40:32 7 the top. And sometimes we've been talking about a
06:40:36 8 number in the middle. So that's the box I'm referring
06:40:39 9 to.

06:40:40 10 Q. Okay.

06:40:40 11 A. Could be a line. Doesn't have to be a box.
06:40:42 12 Box is just -- because I was referring to that figure.

06:40:46 13 Q. Okay. And if -- and what you state in your
06:40:55 14 report is that if someone moves up in the box, it would
06:41:02 15 cause others within the same salary range, their
06:41:06 16 compensation to increase? Or explain to me your top of
06:41:10 17 the box theory.

06:41:13 18 A. I have here in page 229 -- sorry, not page.
06:41:17 19 Page 67, paragraph 229, taking the example of figure 7,
06:41:20 20 if the pay is restricted for any of the kinds of people
06:41:23 21 who may be at the top of the box, then the boxes may
06:41:28 22 stop growing from period to period.

06:41:29 23 So can you imagine that if there is a
06:41:32 24 restriction, it's sort of consistent with what we talked
06:41:35 25 before. If there is a restriction of the highest paid

06:41:39 1 people, or people who might be near the top of the box,
06:41:43 2 that could lead to -- is exactly the example in
06:41:48 3 Exhibit 2 that we talked about today. There is
06:41:52 4 individual -- it's not exactly that example. But if an
06:41:55 5 individual, in the absence of the cold calling, if there
06:41:59 6 were lots of people, there was pressure on the very
06:42:02 7 highest paid people in a group, then their people nearby
06:42:08 8 them or people below them might have -- might see that
06:42:17 9 or feel some upward pressure.

06:42:20 10 So it's just an example of people -- what we've
06:42:22 11 been talking about most of the day, talking about just
06:42:26 12 people at the very top of the box. But as I say here,
06:42:29 13 and I say elsewhere, the cascading effects on others do
06:42:36 14 not rely on the pay of the highest paid people being
06:42:39 15 restricted.

06:42:39 16 So this really was an example of highly paid
06:42:42 17 people at the top of a box being restricted and how
06:42:45 18 propagation can happen there. But it can happen in the
06:42:48 19 other ways we've been discussing today. So that's why I
06:42:51 20 say there was an example, but I say it doesn't rely on
06:42:55 21 this at all.

06:42:58 22 In fact, I don't think we talked about it at
06:42:59 23 all today, and we were talking about all kinds of other
06:43:02 24 mechanisms by which restrictions on cold calling could
06:43:07 25 be associated with hampering levels of -- could be

06:43:13 1 associated with suppression of compensation.

06:43:21 2 Q. Okay. And you note in 229, if pay is
06:43:26 3 restricted for any of the kinds of people who may be at
06:43:28 4 the top of the box, and the boxes may stop growing from
06:43:33 5 period to period. Do you see that?

06:43:35 6 A. If the pay is restricted for any of the kinds
06:43:38 7 of people who may be at the top of the boxes, then the
06:43:41 8 boxes may stop growing. Yes.

06:43:43 9 Q. So are you assuming here that the salary ranges
06:43:48 10 grow depending upon where people -- where employees sit
06:43:53 11 within that salary range?

06:43:55 12 MS. DERMODY: Object to form.

06:43:57 13 THE WITNESS: I'm sorry. Say that again.

06:44:00 14 MR. KIERNAN: Q. Are you assuming, when
06:44:01 15 you state that the boxes may stop growing, that the
06:44:07 16 growth of a salary range depends upon where
06:44:11 17 individuals sit within that range?

06:44:17 18 A. I don't think -- I'm trying to understand your
06:44:19 19 question. I don't think that what I'm saying has to
06:44:22 20 be -- what you -- what you've just said doesn't have to
06:44:25 21 be the case for what I've said here.

06:44:27 22 Q. What do you mean by the boxes may stop growing
06:44:30 23 because somebody at the top of the box didn't get a
06:44:33 24 raise?

06:44:34 25 A. I think it's a -- the idea that if there is

06:44:40 1 less pressure for highly paid workers, and the boxes
06:44:48 2 could be structured based on highly paid workers, the
06:44:51 3 top of the box is based on highly paid workers, then the
06:44:54 4 top of that box wouldn't be as high in the absence of
06:44:58 5 the agreements. That's what I mean.

06:44:59 6 Q. Did any of the defendants construct their
06:45:01 7 salary ranges in that fashion that you just described?

06:45:04 8 MS. DERMODY: Object to form.

06:45:08 9 THE WITNESS: Did any of the defendants
06:45:10 10 construct their salary ranges how?

06:45:20 11 MR. KIERNAN: Q. In the way that you just
06:45:21 12 described.

06:45:22 13 MS. DERMODY: Object to form.

06:45:22 14 MR. KIERNAN: Q. You said the boxes could
06:45:23 15 be structured based on highly paid workers. The top
06:45:26 16 of the box is based on highly paid workers, and the
06:45:29 17 top of the box wouldn't be as high in the absence of
06:45:32 18 the agreements. I want to know if any of the
06:45:34 19 defendants constructed their salary ranges in that
06:45:36 20 manner.

06:45:39 21 A. The defendants used formalized systems. The
06:45:43 22 defendants used market data. Market data includes all
06:45:47 23 kinds of workers, including highly paid workers within
06:45:51 24 job families, lower paid workers. And so to the extent
06:45:57 25 that highly paid workers are in those data, then they're

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of
13 the original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my
16 hand this day: June 18, 2013.

17	X	Reading and Signing was requested.
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18 Reading and Signing was waived.

19 Reading and signing was not requested.

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23

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25

GINA V. CARBONE

CSR 8249, CRR, CCRR